

PUBLIC HEARING
STATE OF CALIFORNIA
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

IN RE:

PROPOSED REGULATORY
TIER REGULATIONS

COPY

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Board Room
8800 Cal Center Drive
Sacramento, California

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TUESDAY, OCTOBER 4, 1994
9:30 A.M.

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Doris M. Bailey, CSR, RPR
Certified Shorthand Reporter
License Number 8751

A P P E A R A N C E S

HEARING OFFICER:

COLLEEN MURPHY, Waste Management Specialist

STAFF MEMBERS PRESENT:

ELLIOT BLOCK, Legal Counsel
CAREN TRGOVCICH, Assistant Director
JACQUES GRAYBER, Staff

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P R O C E E D I N G S

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HEARING OFFICER MURPHY: Good morning and welcome to today's public hearing on the proposed regulatory tier regulations. I'm Colleen Murphy of the Planning and Analysis Office and I'll be the Hearing Officer for today's public hearing.

For the record, today is October 4th, 1994, and the current time is after the official starting time of 9:30 a.m. Therefore this public hearing is now convened.

Under the provisions of the Administrative Procedure Act this is the time and place set for the presentation of statements, arguments, contentions, orally or in writing, for or against proposed regulations establishing regulatory tiers, Title 14, California Code of Regulations, Division 7, Chapter 5.0. The entire proceedings will be recorded by a court reporter and also by an audio recorder. Our court reporter's name is Doris.

The transcript as well as any exhibits or evidence presented at this hearing will be incorporated into the rulemaking file and will be reviewed prior to final adoption and approval of the regulations by the Board and the Office of Administrative Law.

The purpose of today's hearing is to accept public comment. Witnesses presenting testimony at the hearing will

1 not be sworn in, nor will we engage in cross-examination of
2 witnesses. Comments made today will not be responded to at
3 this time, but will be addressed in writing and will be part
4 of the rulemaking record which is available to the public.

5 We ask that you restrict your comments to the
6 proposed regulations. Oral and written comments will be
7 accepted until 12:00 p.m. today. Persons wishing to submit
8 written comments may do so by delivering their comments
9 directly to Bobby Garcia in the back of the room.

10 Bobby, at this time would you please stand up and
11 let everyone know who you are?

12 The proposed regulations were duly noticed on
13 August 19th, 1994 in the "California Regulatory Notice
14 Register." Copies of the notice, the proposed regulations,
15 and the initial statement of reasons were made available to
16 interested parties who requested these documents. Additional
17 copies of these documents can be found at the table in the
18 back of the room.

19 Persons wishing to speak at this hearing should
20 register as a witness with Bobby. Testimony will be heard in
21 the order of registration. Any other persons wishing to
22 speak will be afforded an opportunity after the registered
23 witnesses have been heard. Bobby also has a sign-in sheet
24 for persons wishing to indicate their presence at this
25 hearing. Participants who have signed this sheet will be

1 added to the regulatory tier mailing list. The list is used
2 to notify interested parties of any post-hearing changes to
3 the proposed regulations.

4 To enable the audience, and to ensure that your
5 comments are entered into the record we ask that speakers
6 step up to the podium and speak into the microphone when
7 called. Please begin by clearly stating your name and who
8 you represent. When commenting, please also indicate the
9 proposed regulatory section that each comment addresses.

10 And lastly, I ask that commentors please keep their
11 comments concise. The regulatory tier regulations are the
12 culmination of efforts of Board staff, members of the Board,
13 industry, environmental groups, and local government
14 representatives. In July the Board directed staff to develop
15 a regulatory structure which accommodates the variety of
16 solid waste handling activities and operations that it is
17 authorized to regulate.

18 They also ask that this process be commensurate
19 with the level of threat that the facility or operation poses
20 to public health and safety and the environment. Current
21 regulations require that all facilities, regardless of size,
22 obtain a full solid waste facilities permit. The proposed
23 regulations set forth four tiers which allow for a reduced
24 application and review process. This reduction includes
25 reduced timeframes for review and the amount of information

1 required to be submitted.

2 These tiers provide for the administrative aspect
3 of reduced permit application and review procedures. As
4 such, no specific facilities or operations are slotted into
5 the tiers. And slotting will be accomplished through a later
6 rulemaking process.

7 At this time I'll turn it over to Caren Trgovcich,
8 the Assistant Director of the Planning and Analysis Office,
9 and she can provide you an overview of where the Board
10 intends to go in the future, and their overall role in
11 regulating non-traditional facilities and operations.

12 MS. TRGOVCICH: As many of you will have noticed,
13 the regulatory tiered language that is included in the
14 package that's the subject of the public hearing today is
15 also included in the composting operations regulatory
16 requirements package. Composting operations and facilities
17 will be the first to utilize the regulatory tiers.

18 Upon approval of this package, the regulatory tiers
19 package, by the Office of Administrative Law, and adoption by
20 the Board of these regulations, the regulatory tier language
21 will be removed from the composting operations regulatory
22 requirements package, because this language will become
23 operative within the regulatory tiers rulemaking which is the
24 subject of today's public hearing.

25 Staff is currently working on the development of a

1 general methodologies which will be used to slot facilities
2 in the future. The, a public advisory body has been
3 requested by many commentators to be convened to evaluate this
4 methodology and participate in the slotting of facilities.

5 Board members have directed staff that upon
6 conclusion of this rulemaking process that an advisory
7 committee similar to that of the Compost Advisory Panel be
8 convened to assist staff and assist the Board in developing a
9 methodology which will be used to slot facilities within the
10 tiers and to assist in the initial slotting process.

11 Once again I'd like to remind participants that
12 this effort initiated almost a year ago when the Board
13 requested staff to look at the rulemaking and the regulatory
14 requirements for non-traditional facilities.

15 Staff initially focused on the facilities of, that
16 handled sludge, ash, and contaminated soil as a basis of the
17 initial analysis. Upon adoption of this regulatory package
18 and the convening of the advisory panel we will also be
19 guiding the advisory panel to look at those three facility
20 types or materials and their handling methods for inclusion
21 in the methodology at the outset. So that to make -- to
22 clarify, the facilities handling sludge, ash, and
23 contaminated soils will be those facilities that are
24 initially focused on to utilize the slotting methodology that
25 will be developed by a public advisory committee, and

1 assisting both the Board staff and the Board members.

2 This public advisory committee we anticipate once
3 again being convened somewhere in early November, early to
4 mid-November upon conclusion of this regulatory package.

5 And to summarize for each of you in terms of what
6 happens from today forward on the package, the comment period
7 on this draft concluded yesterday with the public hearing
8 today. We anticipate an additional 15-day comment period
9 which will be required for technical changes and potentially
10 any other changes which are raised in the public hearing here
11 today.

12 We are proposing to have that package mailed by the
13 end of this week or early part of next week in order to be
14 able to come before our Board at the end of this month on
15 October 27th for adoption. This is an accelerated timeframe,
16 and what it does not anticipate are any additional comments
17 which we may receive today or additional direction which we
18 may receive from the Board.

19 So our proposed timeframe is to come before the
20 Board this month for adoption pending any other developments.

21 I'd like to turn it back to Colleen to initiate the
22 hearing.

23 HEARING OFFICER MURPHY: Our first speaker is Chuck
24 White.

25 MR. WHITE: Thank you, Colleen, Caren. Chuck

1 White, representing WMX Technologies and Waste Management
2 Incorporated. We certainly appreciate the opportunity to
3 provide you comments, in fact, my statements this morning
4 will be from, for the most part, the written comments I
5 provided to Colleen in a letter dated October 3rd.

6 We are very supportive of the successful
7 implementation of these regulations which we anticipate will
8 result in a much more predictable program for the permitting
9 and regulation of solid waste activities in California. For
10 the most part we found that these proposed regulations are
11 very clear, consistent with the provisions of the Public
12 Resources Code, in fact, we believe they are essential to
13 implement the provisions of that code.

14 However we do have a couple of areas which we
15 believe require some further clarification and would ask you
16 to address in forthcoming, hopefully forthcoming amendments
17 to these regulations or through expanded statement of
18 reasons.

19 The first area I'd like to draw your attention to
20 has to do with whether or not an LEA or any enforcement
21 agency would have the authority to regulate an activity under
22 a tier other than that would be provided through these
23 proposed regulations.

24 The Public Resources Code makes a number of
25 references to the authority of the enforcement agency to

1 issue permits. And in my letter I've listed those out for
2 the most part as Section 44002, 44007, 44008, and 44010. And
3 the question arises, "Does this provide the authority for an
4 LEA to direct an activity to a higher tier?" For example.

5 For if there is, as an example, if you had an
6 activity that was allowed to conduct its operations under a
7 registration permit tier, for example, within the terms of
8 these proposed regulations, would there be an opportunity for
9 an LEA to say, "No, we want to regulate this as either a
10 standardized permit or as a full permitted activity?"

11 It would be our hope that not be the case, that if
12 there is a set of tiered regulations that they be the
13 regulations and describe the system that is implemented
14 uniformly statewide, and there should not be opportunity for
15 different or deviant interpretations throughout the state
16 from the basic structure that is provided by these tiered
17 regulations.

18 The second area of concern has to do with multiple
19 operations at a single location. The proposed regulations do
20 not appear to address how multiple activities that might
21 occur at a single site would be regulated under a tiered
22 permitting system. Right now we have just simply this
23 proposed tiered structure, and then we have one set of
24 specific tiers that's of the composting regulations.

25 But one question that arises, if you have say five

1 or six or seven of these tiered packages, could multiple
2 activities that would otherwise be eligible for a say low
3 tier under each of these successive packages, if they were
4 all done at one site would the cumulative activity somehow
5 trigger movement of these activities into a higher tier like
6 a standardized permit or a full permit?

7 We would hope that not be the case. That is, if
8 you are eligible for your single activity under one of these
9 tiers, that you would be able to remain in that tier
10 regardless of how many other activities are also conducted
11 within that tier at a particular location.

12 The second question, and it's in a sense related to
13 this, is could a facility with a full permit as an existing
14 facility out there start operations under one of these lower
15 tiers through the provisions of that lower tier? For
16 example, if we had a fully permitted transfer station and it
17 desired to start one of the activities under a registration
18 or standardized permit tier or even under the notification
19 process, would they be able to have access to that tier as
20 long as they complied with the provisions of that tier
21 through the local enforcement agency, or would there be a
22 requirement to somehow fold this into an amendment revision
23 or modification to the full solid waste permit?

24 We would hope that you would clarify that these
25 tiered permitting regulations apply to any location. And we

1 would hope that those facilities that do have existing solid
2 waste permits would be able to have equal access to these
3 tiers as would any other location that doesn't have a solid
4 waste permit. It would seem kind of ironic if you had a
5 situation where a location did not have a solid waste permit
6 and they were allowed to conduct one of these activities
7 under a lower tier, but a fully permitted facility couldn't
8 without going through a full permit revision or modification,
9 it just doesn't make sense.

10 If anything, I would think the Board would want to
11 encourage those sites that already have solid waste permits
12 to conduct additional operations subject to the provisions of
13 these lower tiers.

14 So we urge you to clarify this issue and hopefully
15 express that a fully permitted facility can engage in these
16 lower tiers as part of this, these regulation packages. In
17 fact, I've provided some language that would, in my written
18 comments that would amend Section 18104.5, which is the
19 change in operation for a registration permit tier, and I've
20 suggested similar changes be done to 18105.7 which is change
21 in operation for standardized tier.

22 And consistent with this I believe this rulemaking
23 package would have to make changes to Section 18211 in
24 Article 3.1 which is changes that are under the full permit
25 tier in order to be consistent all the way through if you do

1 decide to adopt this type of strategy.

2 A third area that we have concerns about are
3 activities which are excluded by statute from regulation as a
4 solid waste activity or facility or operation. And I would
5 like to make one correction in some of the terminology that I
6 made in my letter, I forgot to make this, I used the term
7 "exemption" and "exclusion" interchangeably in my comments
8 and I mean to use the term "exclusion," so where I do provide
9 you some suggested language for a new Section 18101.5, it
10 should read "excluded activities" and the second line of part
11 A of that section would be "excluded from regulation," not
12 exempt.

13 And the reason for suggesting that this be expanded
14 upon is, will first of all the, the preauthorization tier is
15 unclear as we read it, whether or not that's meant to be an
16 exclusion or an exception, and I should listen more carefully
17 to my esteemed colleague Denise Delmatier, she has this
18 definition of exclusion and exemption well down.

19 But these proposed tiers do indicate those levels
20 of exemption from full regulation that are appropriate under
21 the Board's authority, but it's unclear where that ends. And
22 I believe that these, this regulation package ought to
23 provide a little more guidance to LEAs on when the tiered
24 permitting system stops. And its applicable provisions are
25 no longer applicable.

1 And I think you should do this by trying to borrow
2 from existing statutory authority where possible. And I've
3 suggested that there be a new section, as I indicated,
4 entitled "Excluded Activities," Section 18101.5 that ought to
5 have at least two provisions. And it ought to indicate that
6 the provisions of the regulatory tiers do not apply to
7 activities that are otherwise excluded from regulation as a
8 solid waste operation or facility pursuant to applicable
9 statutory authority.

10 And the second provision, Part B, ought to be
11 directed to the issue of recovered or recycled materials.
12 There is a, as I'll point out in a second, a wide disparity
13 of views of various enforcement agencies up and down the
14 state, and I think you ought to borrow the language that
15 currently exists in the Public Resources Code 40 -- 40180 and
16 indicate that the provisions of the regulatory tiers do not
17 apply to the management of any reconstituted materials that
18 would otherwise become solid waste when those materials have
19 been returned to the economic mainstream in the form of raw
20 material for new, reused or reconstituted products which meet
21 the quality standards necessary to be used in the
22 marketplace.

23 We believe that this language is necessary to
24 provide guidance to the enforcement agencies that is again
25 founded solidly in applicable provisions of statute. There

1 are many enforcement agencies out there that believe that
2 recycled materials should be continued to be regulated as
3 solid waste even though they have been returned to the
4 economic mainstream in the form of a product for use. On the
5 other hand there are several enforcement agencies which, to
6 the contrary, are not requiring permits for activities that
7 are still processing solid waste prior to returning them to
8 the economic mainstream.

9 And I believe that this kind of language, while not
10 probably solving all the problems and answering all the
11 questions, would provide some clear guidance that there is a
12 break point between regulation under this tiered system and
13 those things that are excluded from regulation.

14 A final item is compliance with CEQA. My copy that
15 I was provided did not provide any indication how the Board
16 intends to comply with CEQA in adoption of these regulations,
17 and we would ask that we be provided a copy of whatever
18 notice you do put forward as part of your compliance with
19 California Environmental Quality Act. Thank you very much.

20 HEARING OFFICER MURPHY: Thank you for your
21 comments.

22 The next speaker is Larry Cogan.

23 MR. COGAN: I am Larry Cogan on behalf of Forward
24 Landfill. First of all, Forward wants to commend the Board,
25 in particular staff, for its hard work and very timely work

1 in promulgating or attempting to promulgate these
2 regulations. We submitted some written comments last week
3 which I will summarize here as concisely as I can. They were
4 basically four comments.

5 The first one dealt with asking for some stronger
6 language in the introductory regulation 1800, or 18100 to get
7 the strong message to operators, and in particular to LEAs
8 that the Board will not tolerate cheating beyond the
9 parameters or limits of a given tier. Because the Board is
10 trying to promulgate a tiered permitting system which will
11 allow a lot of streamlining in application, it also means
12 that there will be a lot of operators out there who will be
13 able to hold themselves out legitimately or not to the public
14 as being, as operating under a state sanctioned permit.

15 And what we want to make sure is that those folks
16 who are operating under registration permit who really should
17 have a standardized permit because there's a change in
18 operations for example, but they perhaps haven't been
19 inspected within the time that they've pushed beyond those
20 limits, get the message strongly that this is inappropriate.

21 We provided the staff with some language which we
22 would suggest being inserted into the reference section which
23 states strongly that solid waste operations within a given
24 regulatory tier are prohibited excepting conformance to the
25 standards, requirements, etcetera, within that tier, and that

1 nonconforming operations may be subject to enforcement action
2 by the Board or LEA as applicable.

3 And we think that's important because both the LEAs
4 and operators are going to be looking pretty much at this
5 division and try to figure out what it is that they can or
6 can't do within a, at least the structure of a permit.

7 Secondly, our comment dealt with the preauthorized
8 tier. We were somewhat troubled by the statement that, you
9 know, in the initial statement of reasons that the
10 preauthorized tier will be for operations that will not be
11 regulated by the Board at all. Although hopefully the
12 operations that would fall within a preauthorized tier would
13 be so benign that in practice there would be no need for
14 regulation.

15 We also are wary of the possibility that someone
16 could start out with some private backyard type operation
17 that the public would not consider harmful to the environment
18 or otherwise. And it could be expanded, particularly in a
19 rural area. And we think that this kind of statement sends
20 the wrong message to LEAs that in essence the Board is not
21 concerned in the least about the preauthorized tier and
22 therefore the LEAs shouldn't either.

23 We think that the operators need to know we've
24 provided some language to be inserted that says that,
25 "Provided that an operation stays within the operational

1 parameters designated for the preauthorized operations, that
2 the operator is not required to notify the enforcement agency
3 or submit an application for a solid waste facilities
4 permit."

5 We do think also that operators need to know, and
6 the LEAs need to know that for an appropriate occasion it may
7 be nothing more than infrequent that the LEA is authorized
8 and is expected to inspect, and otherwise we'll call it
9 exempt or a preauthorized facility. So we strongly recommend
10 that language be inserted that says that preauthorized
11 operations are not exempt from inspection.

12 Our third comment dealt with --

13 MS. TRGOVCICH: Can I, I'd just like to interrupt
14 you and ask for clarification. So is what you're requesting
15 that LEAs be required per the current inspection frequencies
16 in statute to inspect preauthorized facilities in the same
17 manner, or are you recommending some other interval but
18 simply that LEAs be told that they have the authority to go
19 in and inspect?

20 MR. COGAN: It's the latter. I think the Board and
21 staff has indicated, and from the comments that we heard from
22 the LEAs in workshops, that they would prefer not to have a
23 routine set inspection frequency for a preauthorized
24 facility. However the LEAs ought to know that the Board has
25 given them the authority to inspect where needed.

1 Our third comment deals with the enforcement agency
2 notification. It's our understanding that the LEAs and the
3 Board at least want some sort of record of these facilities
4 that would fall within this tier and so for that reason has
5 asked that a rudimentary notification be given to the LEAs,
6 which wouldn't even be reviewed by the LEAs, which states the
7 name and address of the operator, and the name and address of
8 the facility, if that's different.

9 But we think that that is inadequate for the
10 purposes of what the public and the LEA really needs to know.
11 The way it is now someone could put down completely untrue
12 information on it, maybe not even fill in their phone number
13 even, because no one is going to be reviewing this. And we
14 think that there's a couple of ways that we can provide the
15 public and the LEAs with more information, and put a little
16 bit of hammer to the operator to provide correct information
17 without providing any additional burden to the LEAs or the
18 Board whatsoever.

19 The kind of thing I'm getting at here is that if a
20 citizen, for example, a neighbor wanted to know what was
21 going on at the property next door which was operating under
22 a pre, excuse me, a notification tier, that neighbor would
23 not be able to tell the types of the waste being handled
24 there; the peak loading of the waste; even the site owners or
25 owners address and phone number if it was a leased property;

1 the business form of the operator; whether any of the
2 information had changed since the notification form was
3 filed. And to the extent that someone just in the county or
4 within the city was curious about an operation that they had
5 heard about rather than just having an address listed which
6 could be a P.O. Box, they, we believe that a map ought to be
7 included which notes the location of the business.

8 We also think that you have a peculiar situation
9 here where you would have a state sanctioned operation for a
10 potential leased property where the site owner may not be
11 aware of what's going on at the property. And you certainly
12 have a lot of properties where the site owner is located out
13 of state or in another part of the state and rarely comes by
14 the property to see what's actually going on.

15 For all these reasons what we recommend, and we
16 think it can be done very easily, is that the Board should
17 prepare a fill-in-the-blanks standardized form that the LEAS
18 can just, you know, hand out or can be promulgated right in
19 the regulations, so somebody can just copy that, that
20 contains lines for all of these types of information to be
21 filled in.

22 We think that the regulations ought to state that a
23 new notification should be submitted whenever any of the
24 information that's listed on this fill-in-the-blanks form has
25 changed. And we believe, and here's the hammer that would be

1 put on the operator, that the operator be required to certify
2 under penalty of perjury that the listed information is true
3 and accurate to the best of his knowledge and belief which
4 conforms to the other certifications that are required
5 elsewhere in these proposed regulations. And also that the
6 operator has provided a copy of the notification to the
7 landowner if the landowner is different from the operator.
8 And we believe that that addresses all of the issues that we
9 see as otherwise being a problem.

10 I'll point out that if the LEA needs to inspect one
11 of these facilities, this is exactly the kind of information
12 one would presume that the LEA would like to have at hand as
13 proposed to going to the facility and not understanding any
14 of the background or at least the intended nature of the
15 operation.

16 One last point about the notification tier. It's
17 proposed that the LEA retain a notification form for only one
18 year. We think that that's inadvisable for two reasons.

19 One, the LEA may want to have some record of an
20 operator if the operator appears to have moved around
21 somewhat within the county over a period of time, and we
22 think if these forms are routinely tossed after a year that
23 you may not have enough information available to the LEA
24 also, and that would be a year after the facility is known to
25 have ceased operations.

1 We think also that property owners who routinely
2 commission what's known as Phase One Reports in trying to
3 investigate the prior history of a facility that they intend
4 to lease for matters totally unrelated to solid waste
5 facilities would like to have a public record available that
6 their environmental consultants can look at such as a
7 notification form to provide more information to the business
8 community as to what has gone on at a site. For that reason
9 we think the notification forms ought to be retained for five
10 years after the facility has ceased operations, not one year.

11 Our last comment which deals with a statement that
12 was noted in the statement of reasons. And I don't want to
13 take this too much out of context. What it said was that,
14 "Operations," and this was in Section 2(A) of the page six of
15 the statement of reasons. It said that,

16 "Operations which will fit in the
17 bottom two tiers may or may not be solid
18 waste facilities, their activities about
19 which there has been or which there may
20 be disagreement as to how they should be
21 characterized in placing activities in
22 these tiers, the Board would be deciding
23 that it need not answer this essentially
24 unanswerable question."

25 This was in a section that was discussing whether

1 or not the Board had the authority to promulgate a tiered
2 permitting system using something other than a solid waste
3 facilities permit.

4 Our comment on this really just goes to the point
5 that we believe that it's very important for Board and Board
6 staff to make a strong effort in promulgating all of these
7 regulations, not just the structure regulations in such a way
8 that to the extent the facility is even arguably a solid
9 waste facility that it be required to have a solid waste
10 facilities permit as the Board finishes drafting these
11 regulations before us today, and also as it goes onto the
12 next more difficult task of trying to figure out what gets
13 slotted where.

14 We think that the Board has a responsibility under
15 the Public Resources Code 44002 and otherwise to approach its
16 rulemaking with the presumption that solid waste facilities
17 should have a full permit, and that facilities dealing with
18 solid waste should have a solid waste facilities permit, and
19 that it's only upon a very strong showing and consideration
20 by the Board and the public that a facility does not pose a
21 substantial environmental threat, or there are other
22 extremely compelling reasons that would allow facilities
23 ultimately to be slotted into the lower tiers. And with that
24 I'll conclude my remarks.

25 HEARING OFFICER MURPHY: Thank you Mr. Cogan.

1 The next speaker is Mark Leary.

2 MR. LEARY: Good morning, my name is Mark Leary,
3 I'm the manager of Regulatory Affairs for Browning Ferrous
4 Industries here in Sacramento. I'm going to sound a little
5 bit redundant to Mr. Cogan's comments because my comments are
6 of much the same theme.

7 We appreciate, first of all we appreciate the
8 opportunity to comment on these proposed rules concerning
9 regulatory tiers. We appreciate the open and participatory
10 manner in which the rulemaking has been conducted, and the
11 significant effort the Board staff has made to be responsive
12 to public input.

13 Most importantly we support the development and
14 implementation of practical and fair mechanisms to streamline
15 the solid waste facility permitting process in California.

16 My comments are similar to Mr. Cogan's in the sense
17 that I'd like to talk a little bit about the Board's
18 authority to create a tiered permit structure, but I'm going
19 to tackle one principal issue and that is the issue of the
20 notification tier.

21 We support the regulatory tier concept as a means
22 of tailoring the level of regulatory oversight to the level
23 of environmental risk. BFI has proposed the creation of the
24 notification-only permit program. We do not believe the
25 Board has the authority to create a nonpermit tier under the

1 guise of creating a permit program.

2 In the "California Notice Register" announcement
3 regarding the proposed tier regulations, the Board noted
4 that,

5 "The Integrated Waste Management Act
6 provides that the operation of a solid
7 waste facility within a solid waste
8 facilities permit, without a solid waste
9 facilities permit is prohibited."

10 The same notice also indicates that the,

11 "Preauthorized and enforcement
12 agency notification tiers provide for
13 facilities which require minimal
14 regulatory review or oversight, and these
15 tiers are not technically permits."

16 The Board is correct on both counts and therein
17 lies the problem.

18 In companion composting regulations, several
19 significant types of composting operations are relegated to
20 these nonpermit regulatory tiers. Yet a composting facility
21 is defined as a solid waste facility pursuant to Section
22 4194. While Section 44002 does indeed provide that the
23 operation of a solid waste facility by any person except as
24 authorized pursuant to a solid waste facilities permit issued
25 by the enforcement agency is prohibited.

1 We don't believe that the statutory provisions
2 envision the creation of a tiering program that essentially
3 fails to regulate ostensibly permitted facilities. Typically
4 permits require more than simple notification, recordkeeping
5 and compliance with minimal operational criteria. Given that
6 the fact that the legislature specifically provided that all
7 solid waste facilities must possess a permit, and failed to
8 authorize the creation of a tiered permitting program, there
9 is little evidence that it either contemplated the notion of
10 tiered permits or assumed that the statutes provided
11 open-ended authority to regulate certain facilities through
12 approvals that in the Board's words are not technically
13 permits.

14 If the legislature truly envisioned the open-ended
15 delegation to the Board to create permitting tiers, and to
16 establish a entry level tier encompassing minimal oversight
17 it would have said so. But statutes typically do not broadly
18 empower regulatory agencies to engage in activity deemed
19 appropriate, or to create and implement any kind of program
20 deemed appropriate.

21 Instead it is clear that when the legislature used
22 the term "permit" it envisioned permits in their typical
23 sense. Without question there is precedent in both federal
24 and state law for the use of general or standardized permits
25 as well as similar measures used to streamline the permitting

1 process. We do not intend to suggest that the proposed
2 tiering process should be scrapped altogether, we are,
3 however, concerned that the manner in which the proposed tier
4 and composting facility standards when taken together would
5 regulate very significant composting facilities like
6 agricultural composting operations through nonpermit permits,
7 and that would result in little or no oversight of those
8 facilities.

9 At a minimum it is of critical importance that the
10 regulations include substantive and meaningful standards that
11 apply fairly and reasonably to all regulated facilities.

12 In our written comments on the compost regulations
13 we have proposed revisions to the standards that would apply
14 to the registration tier and standardized tier composting
15 facilities. We believe our recommended amendments would help
16 to reduce the disparities and regulations that would be
17 promoted by promulgation of these proposed rules.

18 HEARING OFFICER MURPHY: Did you provide
19 recommendations on the tiers themselves or on the state
20 minimum standards that govern the operations?

21 MR. LEARY: Both.

22 HEARING OFFICER MURPHY: Both. Okay.

23 MR. LEARY: Thank you.

24 HEARING OFFICER MURPHY: Our next speaker is Denise
25 Delmatier.

1 MS. DELMATIER: Good morning, my name is Denise
2 Delmatier with the Gualco Group on behalf of Norcal Waste
3 Systems. We have also provided written comments to Board
4 staff and so I don't intend to go into great detail as far as
5 those written comments are concerned. I'll try to summarize,
6 and much of the summary will mirror much of the previous
7 speakers' comments as well, so I'll try and keep this brief.

8 Obviously this has been a long time in coming and
9 we appreciate the Board staff working out these proposed
10 tiers. We've had many discussions on the subject matter over
11 the past few years, and I'm reminded of Chairman Huff's
12 comments that in promulgating these proposed regulations that
13 the tiers themselves should match the regulatory framework
14 with the perceived risk to public health and safety and the
15 environment so that the regulations do not overly regulate
16 the industry and recycling community, but that the tiers
17 themselves do, in fact, match that public health and safety
18 risk and risk to the environment.

19 With that opening statement I'd like to go through
20 just a couple of, and highlight a couple of comments that
21 Norcal has provided to Board staff. And specifically
22 starting with proposed Section 18103.1 under Notification
23 Tier, Norcal is recommending that the notification
24 application should occur at least 30 days in advance so that
25 the LEA can have the appropriate timeframe in which to

1 determine if the request for this tier is the appropriate
2 level of regulation.

3 In other words, if, if, and this echos some of the
4 previous comments, if a applicant is applying below the
5 level, depending upon the specifics of the operation, below
6 the level of the appropriate level of tier, then obviously
7 the LEA has the obligation to advise the applicant in a
8 timely fashion that possibly a higher level of tier is where
9 that application should be presented.

10 And also on the, on the converse, echoing WMX's
11 comments, once we set these minimum standards within the
12 tiers themselves they should be clear in providing guidance
13 to the LEAs so that there isn't mass confusion out there as
14 far as the LEAs determining which is the appropriate tier,
15 and obviously those are the details that we will be getting
16 to at a later date.

17 Secondly, we make a recommendation that even in the
18 notification tier a short description of the operation should
19 be provided. And this can be done in a streamlined fashion,
20 but this again will assist the LEA in determining the
21 appropriate level of tier, and so that the LEA has some
22 guidance what it is that the operation consists of in order
23 to determine what is the proper tier.

24 Next under Section 18104.2(D)(E) and I, we're
25 making the recommendation that the applicant provide some

1 sort of proof of CEQA compliance, whether it's negative dec
2 or other compliance, but that this, of course, would not
3 affect the CEQA review process at all, but at least provide
4 Board staff that those requirements have been addressed,
5 similar to what we currently do, of course, for the full
6 solid waste tier.

7 HEARING OFFICER MURPHY: I'd like to make a comment
8 regarding the registration tier. Because it's an
9 administerial action we are planning on deleting the CEQA
10 requirements for that tier.

11 MS. DELMATIER: For the registration?

12 HEARING OFFICER MURPHY: Did you say 18104?

13 MS. DELMATIER: Yes.

14 HEARING OFFICER MURPHY: Which is the registration
15 tier. Do you have any feelings one way or another on that?

16 MS. DELMATIER: Yeah. I know that Norcal is
17 recommending that the CEQA compliance be retained for the
18 registration tier.

19 HEARING OFFICER MURPHY: Okay.

20 MS. DELMATIER: For preauthorization and
21 notification, no, but beginning with registration it is their
22 belief and position that CEQA compliance ought to be retained
23 for that level. That's the first level of permit, and so we
24 would be making that recommendation.

25 HEARING OFFICER MURPHY: Okay. Thank you.

1 MS. DELMATIER: Next 18104.1(F) and this is the,
2 our favorite subject, prevent and substantially impair. We
3 simply remind staff that the proper language that's in the
4 statute is prevent or substantially impair as opposed to
5 impede. And so we'll deal with all of that later of
6 course --

7 HEARING OFFICER MURPHY: Thank you.

8 MS. DELMATIER: -- under the prevent and impair
9 regulations and guidance, but just a reminder there.

10 And then moving onto 18105.1 -- what we just
11 discussed was within the registration tier. And then in
12 18105.1 we don't require the prevent and impair finding for
13 standardized, and I'm assuming that's just an oversight
14 because we do for the full, we do for registration, and then
15 in between we don't.

16 HEARING OFFICER MURPHY: It will be required for
17 the standardized permit and we will be adding that language
18 in. It was left out because it is in the statute, but for
19 clarity we will be adding it in.

20 MS. DELMATIER: Obviously in the regulations folks
21 would assume I think. And further, 18105.1(E), under the
22 standardized again, the recommendation is to, rather than
23 incorporating Article 3.2 as a requirement, at a minimum
24 recommendation that report of station information be required
25 for the standardized, and that would, of course, would be the

1 applicable, in our estimation the applicable requirement as
2 opposed to report of green composting site information or
3 report of disposal site information.

4 And I think that was it on the, on the written
5 comments. But just a couple of follow-up comments on the
6 previous speakers, specifically to WMX comments by Mr. White.
7 Again, to reiterate that the LEA needs clear direction so
8 that if it's appropriate to move down a tier that that
9 guidance be provided. If it's appropriate to move up a tier
10 that that guidance be provided. But that the bottom line is
11 basically that once those minimum standards are delineated
12 that those be precise and clear to the LEA so there isn't the
13 confusion. And again I understand, of course, that that's
14 the details of what we're going to be dealing with later, but
15 at least the concept as proposed today that that be kept in
16 mind for future purposes.

17 The, probably the most controversial of some of
18 the, what's being proposed today under the tiers is what are
19 solid waste facilities and what are not solid waste
20 facilities. And certainly we'd like to echo much of Mr.
21 Cogan's remarks and Mr. White's remarks in that, and again
22 referencing back to my opening statement that what we are
23 trying to do here, and I think it was consistent with what
24 the Board staff has proposed to date is match the level of
25 regulatory tier to the public health and safety environmental

1 risk.

2 And so those materials that have been recovered and
3 are proposed for recycling purposes, and are in the form of a
4 reconstituted product or an end product as proposed by WMX,
5 it would be our recommendation at that point processing is
6 over and those previously solid waste materials are no longer
7 solid waste, and therefore are outside at that point the
8 regulatory framework and the permitting framework.

9 Prior to that point where processing is, in fact,
10 required, then those, then it is our recommendation along
11 with the previous speakers that those materials are, in fact,
12 still solid waste materials and are under the authority and
13 jurisdiction of the Board to regulate.

14 Now again, the preauthorization tier and the
15 notification tier for those materials which still require
16 processing, even though they are technically solid waste,
17 they, as proposed, and the details to be worked out later,
18 but those materials are not proposed to be required, or those
19 facilities are not proposed to have a permit required. But
20 they still are under the jurisdiction of the Board, and
21 without that jurisdiction of the Board all of this is, in our
22 estimation, is quite meaningless. Without the ability of the
23 Board and the LEA to, in fact, inspect and enforce the
24 details to be determined later, this package really has no
25 purpose as far as being meaningful in the real world.

1 So again, just to reiterate, the solid waste
2 materials that are currently under statute defined to be
3 under the jurisdiction of the Board and the Board staff and
4 the LEAs as an agent of the Board, we would encourage as we
5 work out the details, that those clear guidance and clear
6 delineation be given to the LEAs so that the confusion does
7 not continue.

8 I'd be happy to answer any questions.

9 HEARING OFFICER MURPHY: None at this time. Thank
10 you.

11 The next speaker is John Huelskamp with Weavers
12 Industry.

13 MR. HUELSKAMP: Good morning. Most of my comments
14 that I have in two letters addressed to the Board I'll,
15 probably best are applied to the composting meetings this
16 afternoon. I just want to make note that the, that our
17 letter dated to Mr. Ralph Chandler, and we have copies to
18 everybody on the Board, and also Scott Humpert dated July
19 19th, 1994 from Weaver Industries be included in the comments
20 this morning as they, if, where, and when they apply. And
21 also a letter by a Mr. Bill Knewland of Biothermic Resource
22 Recovery dated September 25th, 1994 to Scott Humpert.

23 My name is John Huelskamp, I work with Weaver
24 Industries. And regarding tiers themselves I don't have a
25 whole lot to say this morning, I'm more interested in the

1 composting this afternoon, but we certainly support the tier
2 process that you're working on and have been working on for
3 some time. We think it's a step in the right direction
4 towards simplification and the opposite of overregulation,
5 it's a step towards deregulation, and we support that fully
6 and it's something that the State of California needs.

7 We do believe, one specific comment would be that
8 we believe that any site or operation that receives yard
9 waste right after it's collected from curbside should be in
10 some, one of your tiers, we think it should be in the
11 notification tier. We do support that comment.

12 And lastly, we believe that what California really
13 needs is deregulation. We believe that what you're working
14 at here is a lot of good intentions and it's moving in the
15 right direction, but it's that old saying that, "The devil
16 can be in the details."

17 And from a general standpoint, if we let too many
18 regulations or too many things apply into the different tiers
19 you can end up, in effect have the same consequences,
20 overregulation because you can, if you have too many things
21 that have to be regulated in say a notification tier or a
22 registration tier it's going to cause too much additional
23 cost in the operation.

24 And for example, we consider ourselves mulchers of
25 yard waste. We believe this is a very simple and easy

1 process and less onerous and less negative effect on the
2 environment than the average dairy farmer who has manure
3 which is being recycled all over the State of California, but
4 particularly in the San Joaquin Valley. We believe that if
5 you don't have to regulate manure recycling operations you
6 shouldn't be recycling, you shouldn't be regulating mulching
7 of yard waste. And for definition --

8 HEARING OFFICER MURPHY: Excuse me.

9 MR. HUELSKAMP: -- by mulching of yard waste we
10 mean an operation that recycles yard waste that does not add
11 water and does not turn the yard waste just for the sake of
12 turning it.

13 HEARING OFFICER MURPHY: If I could ask you to save
14 those comments for this afternoon, and that way they'll be
15 better applied to the composting regulations. But if you
16 have any other comments --

17 MR. HUELSKAMP: No.

18 HEARING OFFICER MURPHY: -- specifically on the
19 administrative process we can take those.

20 MR. HUELSKAMP: Okay. The only other comment that
21 was just brought up on CEQA, we believe that CEQA should be
22 addressed by the Board when they are assigning a permit. I
23 believe you were saying that, do you consider registration a
24 permit?

25 HEARING OFFICER MURPHY: Yes.

1 MR. HUELSKAMP: So I suspect it would probably
2 apply there then but not at a lower tier.

3 MS. TRGOVCICH: Just to point out the distinction
4 for you which Colleen made earlier, the registration permit
5 as proposed in the tiered language would be considered
6 administrative action in that if the applicant filled out the
7 form and included all the information there will not be, as
8 proposed today, an evaluation of the specifics in the
9 application, and so therefore there wouldn't be, it wouldn't
10 be a discretionary approval. And that's why Colleen was
11 saying we would, we are looking at proposing that CEQA be
12 taken out for the registration tier, because there would be
13 no discretion on the part of the Board or the LEA in that
14 tier.

15 MR. HUELSKAMP: I appreciate you pointing that out.
16 And having heard that I believe that we would prefer that
17 CEQA would be addressed only in the standardized permit or
18 the full permit. It seems to me at the lower levels CEQA
19 will be taken care of by other people like the LEA or the
20 local people that are whatever permits they get. And that's
21 the basic position that we have. We don't want to
22 overregulate. Thank you very much.

23 HEARING OFFICER MURPHY: Thank you.

24 The next speaker is Lauren Dechant with National
25 Audubon Society.

1 MS. DECHANT: Thank you for this opportunity to
2 comment on the draft regulatory tier regulations. National
3 Audubon Society did not have the opportunity to provide
4 written comments so I do apologize for that. We are looking
5 forward to perhaps commenting in the 15-day period that will
6 follow today.

7 So I, as I mentioned I represent the National
8 Audubon Society, and specifically I coordinate a national
9 program called Compost for Earth's Sake, which is a
10 partnership of a variety of sectors, grocery retailers,
11 manufacturers, restaurants, food service operators, etcetera.
12 And we've been working over the last several years to develop
13 regional pilot composting projects showcasing the potential
14 of source separated, composting of source separated organic
15 materials, specifically food and yard waste and nonrecyclable
16 paper. And we are committed to promoting source separated
17 composting on the municipal level for two main reasons. We
18 see source separated composting as the next step beyond
19 traditional recycling --

20 HEARING OFFICE MURPHY: Sorry to interrupt you.
21 Are your comments specific to compost?

22 MS. DECHANT: Well I do have a tier recommendation,
23 soon.

24 HEARING OFFICER MURPHY: Okay. Go ahead.

25 MS. DECHANT: We really see the potential of

1 composting to divert organic materials from disposal thus
2 fulfilling the diversion goals. We also want to see it done
3 in an environmentally sensitive manner by source separation
4 providing for a valuable product to be applied on farms and
5 commercial forests to replenish eroded and depleted soils.

6 We commend California's efforts to divert 50
7 percent of its waste from landfills by the year 2000. And we
8 see that composting plays a major role in that. We want to
9 see the State of California successfully demonstrate
10 self-sufficient, environmentally sound, and cost effective
11 plans that can integrate both recycling and source separated
12 composting. We see California in a position to create a
13 national model for composting.

14 To address the regulatory tiers I offer the
15 following suggestion. The proposed tiered permitting
16 structure although affording much flexibility I feel that, we
17 feel that it's not enough flexibility. There are no
18 provisions in that for source separated organics. As it
19 stands, facilities that handle source separated organics will
20 be classified as mixed solid waste facilities subjected to a
21 full solid waste facility permit. I'm not suggesting that
22 source separated feedstocks not be regulated, I think the
23 regulations are necessary to ensure public and environmental
24 safety as well as a guarantee of a consistent product for
25 potential end users. What I'm saying is that we feel through

1 our experience, that source separated feedstocks have less
2 physical and chemical contamination --

3 HEARING OFFICER MURPHY: Excuse me, if I can ask
4 you to save those comments for the composting public hearing
5 that's at 1:00 o'clock this afternoon.

6 MS. DECHANT: Well I won't go into the
7 contamination quality issues, although I am proposing and
8 suggesting that a, an additional tier be added. A
9 residential, commercial and institutional source separated
10 organics tier. As opposed to --

11 HEARING OFFICER MURPHY: That's actually a waste
12 type of facilities that would be slotted into the
13 administrative tiers that are being proposed in this package
14 today that we're discussing this morning --

15 MS. DECHANT: Okay.

16 HEARING OFFICER MURPHY: -- and so the actual waste
17 types and facilities for composting will be discussed this
18 afternoon.

19 MS. DECHANT: Now I was told that this morning
20 would be the appropriate session to talk about inserting an
21 additional category into the regulatory tiers.

22 MS. TRGOVCICH: Maybe just to add some
23 clarification of what, the tiers that we're talking about
24 this morning are the tiers of preauthorization, notification,
25 registration, standardized and full. When you talk about

1 there's not enough flexibility for purposes of the regulatory
2 package that we're hearing this morning we would be
3 interested in your comments relating to those tiers. Would
4 you want to add another tier in there, something in between,
5 for example, notification and registration, or something in
6 between registration and standardized versus the types of
7 materials or handling methods that are falling into each of
8 those specific tiers?

9 So the purpose of this morning is to talk about
10 preauthorization notification, registration, etcetera, or any
11 variations that you may have. This afternoon is to talk
12 about, specifically for composting facilities where they may
13 fit in those tiers.

14 MS. DECHANT: Okay. Well then I will save my
15 comments for later then. Thank you.

16 HEARING OFFICER MURPHY: Thank you.

17 The next speaker is David Hardy.

18 MR. HARDY: Good morning. I'm David Hardy and I'm
19 President of the California Organic Recycling Counsel which
20 represents over 600 members statewide of both generators
21 processors and end users.

22 CORC strongly supports the tiered permitting
23 process. We've submitted a, some written comments in regards
24 to this on particular items that, of suggestions we have.
25 I'm going to begin my comments as to why we support it.

1 First and foremost, it provides a structure for our
2 industry we feel to move forward. The language is clear and
3 concise and easily delineates based on feedstocks.

4 More importantly, it provides a flexible framework
5 that's based on the feedstocks as well as the concerns of
6 public health and safety.

7 Finally, we'd like to commend staff and the Board
8 for not only their hard work but their leadership in
9 developing a system and framework that represents the rights
10 of both the public as well as the industry. Thank you.

11 HEARING OFFICER MURPHY: Thank you.

12 The next speaker is Joshua David Brysk.

13 MR. BRYSK: Good morning, I'm Joshua Brysk. I'm an
14 intern for the Center for Public Interest Law. I just have a
15 few brief comments today. We didn't have an opportunity to
16 review the regulations in full so perhaps during the
17 amendment period we'll, for the proposed amendments, we'll be
18 submitting something further.

19 One of the concerns that we may have as has been
20 stated by others here today is the authority that the Board
21 may have to set up the preauthorization and enforcement
22 agency notification tiers. I don't have a comment on that
23 precisely today, although we do have some concerns as to
24 whether there is the authority there.

25 Overall I think that the goals of streamlining the

1 permitting process and to some extent deregulating are good
2 ones. We're concerned though that the particular proposed
3 rulemaking is not specific enough in giving the details for,
4 that will be necessary for the public to assess whether this
5 will be to the public benefit.

6 We have specific concerns about any gap period
7 where if this proposed rulemaking is implemented and the
8 further rulemaking concerning the contents and qualifications
9 for each of the five tiers has not yet been implemented, what
10 the process that the Board will be using to delineate where
11 facilities have not applied for a permit and yet are
12 continuing their operations.

13 With regard to the preauthorization tier. I think
14 it can be described accurately as nothing less than total
15 deregulation. The, one of the problems that will be
16 presented to the Board with this type of deregulation is it
17 will severely limit the availability of statistics that the
18 Board has a need for in terms of complying with some of its
19 other functions. Just to name one, for instance, in
20 determining the statistics for source reduction, if there are
21 significant numbers of albeit small operations going on
22 throughout the state under the preauthorization tier, those
23 could be left out of the statistics in terms of source
24 reduction, and that could present a severe problem for the
25 Board that the Board would have no way of knowing what those

1 statistics represent.

2 In addition, there is no accounting for the volume
3 of operations that may fall under these various tiers,
4 although it appears that the further regulations will
5 delineate the types of operations as to what tier. There
6 should be some consideration for the size of an operation.

7 Specifically, also with the preauthorization tier,
8 the problem that we might see in the future is that the
9 operator themselves will be self-determining whether they fit
10 in this tier. There's no process for the Board to review
11 whether an operator has adequately assessed whether they
12 actually fit in that preauthorization tier.

13 In line with that we would like to pose the
14 question, what would be the result if an operator of a solid
15 waste-recycling facility or a solid waste handling operation
16 thought themselves to be within the preauthorization tier or
17 one of the lower tiers and then later it was determined by an
18 enforcement agency or the Board where it actually fit into a
19 higher tier? It's self-evident that one of the Board's
20 essential functions is to review these operations of waste
21 and recycling and facilities and handling, and that to
22 protect the public by reviewing these operations ensuring
23 that there's no threat or potential threat to the public.

24 Deregulation as being proposed or delegation of
25 some of these responsibilities to an executive director may

1 be appropriate under some circumstances and to some extent,
2 and a set of regulations which would preauthorize or
3 predetermine the qualifications for tiered permitting may
4 also be acceptable, but I cannot envision any circumstance
5 where it would be acceptable to delegate these
6 responsibilities to the operators themselves which is the
7 essence of the preauthorization tier, and to an extent the
8 enforcement agency notification tier.

9 As a way of mitigating the effect of having, or the
10 possibility that there should be some gap period between the
11 implementation of these proposed rules and later proposed
12 rules delineating the specifics of, and the qualifications
13 for each of the tiers, we would suggest that this regulation
14 not become effective until such time as later regulations
15 giving the specifics become effective.

16 HEARING OFFICER MURPHY: That's the case with these
17 regulations, they won't be applicable.

18 MR. BRYSK: Oh, all right. I'm sorry. As I say, I
19 haven't had the opportunity to fully review them.

20 It would be actually preferential despite the,
21 despite the possible complexities that could be involved it
22 would be preferable to have those regulations as part of the
23 same rulemaking process. The reason for that is that as this
24 sets out a framework, it sets out an empty framework. In
25 that vagueness is the possibility that the Board will not in

1 effect ensure the procedural safeguards that are necessary to
2 protect the public.

3 In reviewing the, the content of the specific
4 guidelines that the Board will use in determining what
5 operators of facilities will fit into these tiers, only then
6 can the public truly know whether this system is one that
7 will be to the public benefit and protect the public safety.

8 It was said earlier that, "The devil is in the
9 details." I would like to mirror that with a comment that I
10 believe the devil is in the lack of details, and that in this
11 vagueness is the possibility that the Board may not be
12 ensuring the public safety. Thank you very much.

13 HEARING OFFICER MURPHY: Thank you.

14 The next speaker is Evan Edgar.

15 MR. EDGAR: Evan Edgar, CRRC. I've been on the
16 trail of tiers for the last two years now, nothing is new. I
17 just want to introduce my October 3rd, 1994 letter into the
18 record. And there's no new information I have other than
19 what I said in March at the workshops on the trail of tiers
20 in Burbank, in Sacramento. Nothing has changed, so I'd like
21 to enter my comments into record.

22 HEARING OFFICER MURPHY: Thank you.

23 The next speaker is Kathy Currie.

24 MS. CURRIE: I am Kathy Currie, Gratten, Karp and
25 Miller. And I am here representing the California Biomass

1 Energy Alliance. We wanted to address, restrict our comments
2 today to just addressing the exemption authority briefly.

3 There's been a lot of discussion about your
4 authority to have an exception or exclusion tier within the
5 regulatory framework. It's our belief that in contrast to
6 the earlier comments that were heard and which it is stated
7 that there's a presumption that a solid waste facility permit
8 should be required, AB 1220, which is much more recent
9 legislation, provides a very strong interpretive presumption
10 to the contrary, in that when a activity or operation is
11 already regulated by another agency the Board, in fact,
12 should not be regulating that activity. And they've been
13 given a very strong directive to seek out those areas,
14 identify them, and then withdraw from regulation. And we
15 believe that that provides fully adequate authority for the
16 Board to adopt both of the lower tiers. Thank you very much.

17 HEARING OFFICER MURPHY: Thank you.

18 The next speaker is Dick Edminster.

19 MR. EDMINSTER: I'm the Planning Manager with the
20 Alameda County Waste Management Authority. I have a letter
21 dated yesterday I'd like to submit.

22 Very briefly, we are still concerned with the
23 inclusion of mixed solid waste facilities requiring a full
24 permit. We are currently engaging in some real world
25 experience --

1 HEARING OFFICER MURPHY: I'm sorry to interrupt,
2 are your comments pertaining strictly to composting
3 regulations or will they pertain to the administrative
4 process of the tiers? I notice you have that addressed to
5 Mr. Humpert and he's, will be holding a hearing later today
6 at 1:00 o'clock for the composting regulations.

7 MR. EDMINSTER: Our concern is with the inclusion
8 of mixed solid waste as a, requiring a full permit as opposed
9 to a standardized. So I could --

10 HEARING OFFICER MURPHY: Yeah, if I can ask you to
11 hold that until 1:00 o'clock this afternoon. Would you like
12 your copy back?

13 MR. EDMINSTER: You can hold onto that, it would be
14 fine.

15 HEARING OFFICER MURPHY: Okay. Thanks.

16 The last speaker is Ed Stockton.

17 MR. STOCKTON: Give you something to look at as
18 you're going around. And this is what I faxed to Colleen
19 yesterday and there's 20 copies. What I gave you is -- first
20 of all my name is Ed Stockton, I'm with the Positive Power
21 Company. We're a coal fired power plant in the Port of
22 Stockton.

23 I've been coming to the meetings to try and supply
24 you with enough information and make you feel comfortable
25 with what we're, you know, proposing to the Board. And

1 basically the letter that I outlined to Colleen was we are
2 hoping that if we supply you with enough information to make
3 an intellectual decision to put us in a preauthorized tier.

4 I understand there's a lot of concern from a lot of
5 people not to have a preauthorized tier. I think that would
6 be a mistake on the, on the Board's part. I think that
7 they're, I think we've all seen there's a tremendous amount
8 of overview on facilities like ourselves. Certainly there's
9 enough concern from enough of the different people that would
10 be taking our material, landfill operators and such, that if
11 we weren't doing what we said we were doing they would not be
12 interested in our material and they would be certainly
13 jumping on the bandwagon saying why we could not use it.

14 I think it's a good material. I think it could be
15 used in a lot of applications. It certainly can be used in
16 top cover for landfills in which we are currently trying to
17 do with several different facilities, and they've been
18 extremely helpful in getting us to that point.

19 We are also looking at alternatives, realizing that
20 the limit of space available in the landfills and the overall
21 costs associated with the average ratepayer, it's actually
22 two-fold basis. There are people that actually pay their
23 electrical rates and then there are people that pay their
24 garbage rates, and they kind of get hit from both sides when
25 they're required to take a material that you see in front of

1 you to landfill. The costs can be extremely enormous and
2 they can be dependent on a variety of things --

3 HEARING OFFICER MURPHY: I'm sorry to interrupt
4 you. What we're doing today is taking comments specifically
5 on the administrative process associated with the regulatory
6 tiers.

7 MR. STOCKTON: I understand that.

8 HEARING OFFICER MURPHY: And not with an actual
9 waste today.

10 MR. STOCKTON: I understand that, and there's a
11 reason for this.

12 HEARING OFFICER MURPHY: Okay.

13 MR. STOCKTON: In my discussions with Bobby Garcia
14 and Bob Holmes and some of you other up there is that I think
15 the way that we see this is that you guys have developed this
16 cart, okay, I mean it's a really crude way of looking at it,
17 but it is a cart, and depending on how you build this cart,
18 this tiered program that you're looking at, you're going to
19 need a series of horses to pull it, to pull it later, okay.
20 And so I think it's, my concern basically is that I'm hoping
21 that the cart isn't so big that you're going out there
22 looking for horses just to pull it because that wasn't the
23 original intent of the streamlining of these issues.

24 I think if, we're not at methodologies yet, and I
25 don't believe that until you know the methodologies and you

1 know where you're going to be placing the tier you can't
2 decide whether there's going to be an economic benefit, or if
3 there's going to be competition with businesses, or
4 interstate or out of state. I don't believe that it's
5 possible to say those things.

6 And so to comment on the tiered program, which we
7 are in favor of your tiered program, and it explains that in
8 the paper we're very much in favor, we believe that there
9 should be a system in which you can look for the bad guys who
10 are playing. I'm hoping that our honest approach coming up
11 here, and I'm not bringing a consultant or attorney to come
12 up here and speak for us, I'm speaking to you directly from
13 the front line, seeing exactly what's happening and just
14 trying to express that, that in this tiered, in this cart we
15 really want to be, you know, a streamlined cart, one that
16 truly, the horses that are pulling it are those, the ones
17 that truly bear the burden of the waste disposal issues, not
18 the ones that there are alternatives for that. So that's my
19 comment.

20 HEARING OFFICER MURPHY: Thank you.

21 Is there anybody who did not fill out a speaker
22 request form that would like to make a comment? Then this
23 meeting is convened.

24 Oh, I'm sorry, Caren, this meeting is opened.

25 MS. TRGOVICH: Adjourned.

1 HEARING OFFICER MURPHY: Oh, I'm sorry, I thought
2 you were making another comment.

3 MS. TRGOVCICH: No, just to maybe clarify, I know a
4 number of you walked in after we had started. The process
5 here is that this concludes the public comment period and the
6 public hearing. We will be taking this comment and revising
7 the draft regulations and issuing a new draft with a 15-day
8 comment period attached to it. That new draft will go out
9 either at the very end of this week or the very first part of
10 next week for a subsequent 15-day comment period.

11 As currently planned this item will be heard by the
12 Permitting and Enforcement Committee on the 19th of October,
13 I believe their meeting is on the 19th, while the 15-day
14 comment period is still open. The committee will be looking
15 at the regulatory package that we've discussed today plus any
16 additional items that may be proposed for change in that
17 15-day period. The 15-day comment period will end the day
18 before the Board's general business meeting this month on the
19 26th of October. It is proposed that this package will be
20 heard for adoption by the Board at its meeting the next day,
21 October 27th, and I believe that meeting is here in
22 Sacramento, I'm not, I'm not sure, I haven't looked that far
23 out at this point.

24 UNIDENTIFIED SPEAKER: San Jose.

25 MS. TRGOVCICH: No, it's San Jose. That is the

1 MS. TRGOVCICH: No, it's San Jose. That is the
2 proposed schedule right now. That would anticipate that
3 there would be no subsequent comment period beyond this
4 15-day period to begin either the end of this week or the
5 first part of next week. That schedule is subject to change.
6 I just want to tell you what we're proposing right now.
7 We're proposing for adoption this month on October 27th
8 pending any additional changes.

9 Yes, Denise.

10 MS. DELMATIER: So, I just want to be real clear,
11 obviously this is an important item for a lot of folks. So
12 you're not going to set this for discussion by the Board on
13 the 26th, it's the --

14 MS. TRGOVCICH: I believe the way the Board meeting
15 is working is that the actual business portion of their
16 meeting is on the 27th and the 26th is local activities. I
17 believe that's how the general business meeting is working
18 this month.

19 MS. DELMATIER: Okay.

20 MS. TRGOVCICH: When the Board goes out of town
21 generally it's a two day meeting, one day are their general
22 business items, and the second day is presentation by local
23 officials and tours if there are any. I believe that
24 schedule is being switched that month.

25 MS. DELMATIER: Okay.

1 MS. TRGOVCICH: Okay. Are there any other
2 questions on how we're going to proceed?

3 Okay. If not the meeting is adjourned.

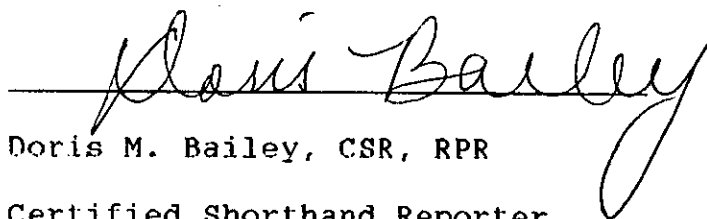
4 (Thereupon the foregoing hearing was
5 concluded at 10:55 a.m.)
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1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER
2

3 I, DORIS M. BAILEY, a Certified Shorthand Reporter
4 and Registered Professional Reporter, in and for the State of
5 California, do hereby certify that I am a disinterested
6 person herein; that I reported the foregoing hearing in
7 shorthand writing; and thereafter caused my shorthand writing
8 to be transcribed by computer.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said proceedings, nor in
11 any way interested in the outcome of said proceedings.

12 IN WITNESS WHEREOF, I have hereunto set my hand as
13 a Certified Shorthand Reporter and Registered Professional
14 Reporter on the 11th day of October, 1994.

15
16 
17 Doris M. Bailey, CSR, RPR
18 Certified Shorthand Reporter

19 License Number 8751
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PUBLIC HEARING
STATE OF CALIFORNIA
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

IN RE:)
)
COMPOSTING OPERATIONS)
REGULATORY REQUIREMENTS)
_____)

COPY

--oOo--

Board Room
8800 Cal Center Drive
Sacramento, California

--oOo--

TUESDAY, OCTOBER 4, 1994
1:10 P.M.

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Doris M. Bailey, CSR, RPR
Certified Shorthand Reporter
License Number 8751

A P P E A R A N C E S

BOARD MEMBERS PRESENT:

JESSE HUFF, Chairman

HEARING OFFICER:

SCOTT HUMPERT, Associate Waste Management Engineer

STAFF MEMBERS PRESENT:

ELLIOT BLOCK, Legal Counsel

DOROTHY RICE, Chief Deputy Director

CAREN TRGOVCICH, Assistant Director

KENNETH HUGHES, Senior Waste Management Engineer

PAULINO LUNA, Waste Management Engineer

JACQUES GRAYBER, Staff

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P R O C E E D I N G S

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3 BOARD CHAIRMAN HUFF: Good afternoon and welcome to
4 the Integrated Waste Management Board. I'm Jess Huff, I'm
5 Chair of the Board, and I'm making an opening statement
6 because I asked to. But there were three reasons why I
7 really wanted to make an opening statement.

8 First was to convey my deep-seated belief that what
9 we're doing here is vitally important to the State of
10 California in terms of achieving the 25 and particularly the
11 50 percent goal of waste diversion.

12 But also important in creating in those solid waste
13 area a distinction between activities. And prior to our
14 undertaking of this activity, prior to last year our creating
15 regulations on green waste composting, it was a one size fits
16 all type permit. That's clearly inappropriate when it comes
17 to compost activities. It's very clear that the law requires
18 that composting facilities get a permit. But the law doesn't
19 require that they get the same brand of permit that some
20 landfill is required to get. And it's very clear to me that
21 there is a distinction to be made between a compost facility
22 and the landfill.

23 This Board has undertaken to define that
24 distinction and to create that unique permit, or in this case
25 that unique continuum of permits based on the nature of the

1 facility being permitted. I think that is a tremendous step
2 forward in intelligent regulation and I'm very pleased that
3 we're taking that step and I think that it's very beneficial
4 to the regulatory process in the state. I think we're
5 already seeing in other agencies and in other areas of
6 regulation that regulators are taking notice of this manner
7 of approach to actually regulate proportionately to the
8 nature of the thing being regulated. It seems to make a lot
9 of sense, but it doesn't always happen in government. So
10 that's the second reason that I'm, I was asking to make the
11 statement. I wanted to really impress upon everyone who
12 would listen how important I regard that step to be as well
13 as how important I regard the, these proceedings to be toward
14 achieving the 25 and 50.

15 The third thing I wanted to convey is this process
16 has unfolded with input. We have solicited input at every
17 step of the way, sometimes we've taken missteps to be sure,
18 and this process always seems to take longer than you think
19 it will. But we sincerely want input from the people
20 affected as to what our regulations mean to them, what they
21 think we got right as well as what they think we got wrong.
22 Sometimes we are able to accommodate and change things,
23 sometimes there are other compelling reasons why we can't.
24 But we want to know. And that's from my position as Chair.

25 Through the entire organization, everyone in this

1 organization is oriented toward the regulated community and
2 finding those areas where we can agree and being very
3 specific on those areas that we can't agree and why. And so
4 we want input, the more input the better. That does create a
5 little bit of workload, but it's better to know it now than
6 to hear about it later on, either when we try to implement
7 regulation, or when someone writes a letter to the Governor
8 or something of that sort, or to their favorite legislator,
9 and we get asked questions at that point in the process.
10 It's better to respond to concerns and ask questions now.
11 It's better for us and it's also probably better in the long
12 run for intelligent regulation.

13 So I wanted to convey those three things. What
14 we're doing here today is important to management of the
15 waste stream, what we're doing here today is a tremendous
16 step forward in intelligent regulation, making it
17 proportional to the activity being regulated, and what we're
18 doing here today is a sincere effort to write the best
19 regulations that we can using the input that we can get from
20 you folks here today.

21 So I'll turn it over to Scott and he'll actually
22 conduct the meeting, and we have a lot of staff here to make
23 sure that we get all of the comments. Scott.

24 HEARING OFFICER HUMPERT: Thank you, Chairman Huff.
25 Good afternoon and welcome to today's public hearing on the

1 proposed composting operations regulatory requirements. My
2 name is Scott Humpert. I'm a member of the California
3 Integrated Waste Management Board staff. I'll be the Hearing
4 Officer for today's public hearing, and you'll notice that
5 there are a number of other people up here. Ken Hughes is
6 across from me and he's my senior. Caren Trgovcich is our
7 Division Chief, so to speak, I guess. And we have our legal
8 staff Elliot Block sitting next to Caren Trgovcich. And to
9 my right is Paulino Luna who has been helping me write the
10 regulations, for work on the regulations.

11 For the record, today is October 4th, 1994. And
12 the current time is after the official starting time of 1:00
13 p.m. therefore this public hearing is now convened.

14 Under the provisions of the Administrative
15 Procedure Act this is the time and place set for the
16 presentation of statements, arguments, and contentions,
17 orally or in writing, for or against amendments to in
18 addition of proposed regulations governing the composting
19 facilities permitting procedures and enforcement, Title 14,
20 California Code of Regulations, Division 7, Chapter 3.1. The
21 entire proceedings will be recorded by a court reporter and
22 also by an audio recorder. Our court reporter's name is
23 Doris Bailey.

24 The transcript as well as any exhibits or evidence
25 presented at this hearing will be incorporated into the

1 rulemaking file and will be reviewed prior to the final
2 adoption and approval of the regulations by the Board and the
3 Office of Administrative Law.

4 The purpose of today's hearing is to accept public
5 comment. Witnesses presenting testimony at the hearing will
6 not be sworn in, nor will we engage in cross-examination of
7 witnesses. Comments made today will not be responded to at
8 this time, but will be addressed in writing and will be a
9 part of the rulemaking record which is available to the
10 public. We ask that you restrict your comments to the
11 proposed regulations.

12 Oral and written comments will be accepted until
13 5:00 p.m. today. Persons wishing to submit written comments
14 may do so by delivering their comments directly to Jacques
15 Grayber in the back of the room.

16 At this time, Jacques, would you please stand up?
17 Thank you very much.

18 The proposed regulations were duly noticed on
19 August 19th, 1994 in the "California Regulatory Notice
20 Register." Copies of the notice, the proposed regulations,
21 and the initial statement of reasons were made available to
22 interested parties who requested these documents. Additional
23 copies of these documents can be found at the table in the
24 back of the room with Jacques.

25 Persons wishing to speak at this hearing should

1 register as a witness with Jacques also. Testimony will be
2 heard in the order of registration. Any other persons
3 wishing to speak will be afforded an opportunity after the
4 registered witnesses have been heard.

5 We'll do one amendment to that statement. If you
6 do have a plane flight that you need to catch and are
7 concerned about the time please let Jacques know or put it
8 down on the registration form. I'll receive that and I'll
9 call you early to help you catch your flight.

10 Jacques also has a sign-in sheet for persons
11 wishing to indicate their presence at this hearing.
12 Participants who have signed this sheet will be added to our
13 compost mailing list. This list is used to notify interested
14 parties of any post hearing changes to the proposed
15 regulation.

16 To ensure that your comments are entered into the
17 record we ask that the witnesses step up to the podium in
18 front of us here and speak into the microphone when called.
19 Please begin by clearly stating your name and who you
20 represent. When commenting please also indicate the proposed
21 regulatory section that each comment addresses.

22 And lastly, I ask that the comments please be kept
23 concise. It looks like we have a lot of speakers today and
24 we only have until 5:00 o'clock. Well we will go through all
25 the speakers today whether it goes beyond 5:00 o'clock or

1 not.

2 So at this point I believe we're ready to begin.
3 And why don't we call our first witness. The first witness
4 is Raymond C. Miller, Southern California Alliance of
5 Publicly-Owned Treatment Works, SCAP.

6 MR. MILLER: Mr. Humpert, members of the staff,
7 thank you for giving me the opportunity to speak. My name is
8 Raymond C. Miller for the record. I'm the Executive Director
9 of the Southern California Alliance of Publicly-Owned
10 Treatment Works, acronym SCAP, representing some 38 publicly
11 owned treatment works from the Mexican border to Santa
12 Barbara.

13 The Alliance submitted a letter on July 20th to
14 Chairman Huff, and that's a matter of record. I would like
15 to add some additional comments. These comments are also
16 contained in a letter that was submitted earlier to you
17 people.

18 Among the primary purposes of the Alliance is to
19 work with regulatory boards to achieve sensible, cost
20 effective regulations affecting agencies involved treatment
21 of water, collection treatment, reuse, recycling or disposal
22 of wastewater and all of its residuals. A matter of record
23 you have my letter, like I say, of July 20th. By this time
24 you have also received a number of similar letters mailed to
25 the Board by our member agencies, many of them which are here

1 today to testify, as well as POTWs from other parts of the
2 state.

3 All we have outlined, all of these people have
4 outlined their concerns over the placement of biosolids,
5 composting on the most stringent permitting tier. All will
6 have supported their comments with sound reasoning, will have
7 echoed historical and scientific data attesting to the safety
8 of properly composted biosolids. The condition already
9 assured under Federal 40 CFR 503 regs.

10 Since this information is already on record it will
11 not be my purpose to merely repeat that today. Rather I
12 would like to focus on the importance of complying with those
13 portions of the 1977 and 1987 amendments to the Clean Water
14 Act, California Integrated Solid Waste Management Act, more
15 specifically AB 939, all supporting the reuse of biosolids to
16 reduce waste being sent to landfills.

17 Let me center my comments on what the proposed
18 regulations mean to this effort. In concert with other
19 associations such as California Association of Sanitation
20 Agencies, the Bay Area Dischargers Association, and Tri Tech,
21 considerable amount of work has been done by our Biosolids
22 Committee in providing accurate data to the Board in
23 preparation for appropriate regs. In turn, our member
24 agencies have not only been kept informed of the process, but
25 through the committee's efforts have been encouraged to

1 continue in their composting programs.

2 If not already so involved, members are making
3 plans for composting facilities in order to comply with
4 current recycling concepts promulgated by both Congress and
5 our state and regulatory community of which this Board is a
6 part. How discouraging it is to receive calls at the SCAP
7 headquarters from agencies stating that, "If this is the
8 level of permitting to be required with its inherent costs,"
9 to quote a member's statement, "we'll just discontinue our
10 plans, continue to take it all to the landfill." That
11 troubles us.

12 It is inconceivable that the Board's Compost
13 Advisory Panel made up of scientists and respected members of
14 the public who have had vast experience in the area of
15 composting would conclude that biosolids composting must be
16 regulated at that level, especially in that the Board's
17 findings contradict the evidence presented by those
18 prestigious groups who are involved in the scientific
19 research and assessment of this activity.

20 One can only conclude that the decision of the
21 Board is more a result, a perception perhaps than the fear of
22 public opinion than is scientific fact. A historical
23 beneficial use of biosolids attesting to its safety over
24 many, many years appears to have been ignored. If an unaware
25 public is the yardstick for measuring regulatory concern we

1 then run the dangerous risk of catering to ignorance. If
2 unfounded fears dictate our policies we will have chartered a
3 course leading in a direction countered to that route mapped
4 out by current mandates. We will have stalled movements
5 towards improving the environment through recycling.

6 Would we not be better off supporting adequate
7 regulations that promote rather than negate the educational
8 efforts towards widespread appreciation of the benefits of
9 biosolids reuse. Such educational programs have been in the
10 forefront of the activities of the Water Environment
11 Foundation on the national level.

12 In Southern California public awareness is a major
13 focus of SCAPs Biosolids Committee as well as among many of
14 our member agencies. This is a fact to which you can be
15 witness, Mr. Humpert, in that you were a featured speaker
16 earlier this month at San Diego's Biosolid Symposium where
17 this subject was the major topic.

18 The California Biosolids Communication Initiative,
19 a joint effort of SCAP and CWPCA, the Southern California
20 Compost Coalition bring together biosolids producers and
21 users and a number of other agencies, associations, and soil
22 amendment companies, all are involved heavily in public
23 awareness programs. All are working hard gaining public
24 acceptance with the ultimate goal of fulfilling the mandate
25 to lessen the burden on the landfills and promote the

1 recycling of our natural resources.

2 On behalf of all these agencies we represent, I
3 urge the Board to allow the process to go forward to assist
4 in the public education effort, and to not bend to unfounded
5 fears and ignorance. Complete your task by allowing
6 biosolids composting a fair and equitable place on the tiered
7 permitting system that will lead to those goals we all
8 endorse.

9 Thank you again for the opportunity to make this
10 presentation. I'd be glad to answer any questions.

11 HEARING OFFICER HUMPERT: We have no questions, but
12 thank you, Mr. Miller, we do appreciate your comments. The
13 next witness is Rebecca Bjork, City of Santa Barbara.

14 MS. BJORK: Good afternoon, my name is Rebecca
15 Bjork, and I'm here representing the City of Santa Barbara.
16 The City of Santa Barbara operates an eleven million gallon
17 per day treatment plant which treats all the wastewater for
18 the city. The wastewater sludge or biosolids created in the
19 treatment of this wastewater is very low in heavy metals
20 concentrations.

21 For many years this material was land applied to
22 local farms where it improved the quality of the soil by
23 adding nutrients and humus material. During this time there
24 was no observed increase of metals in the soil, nor were
25 there any adverse impacts on the crops grown or the

1 groundwater in the vicinity of the projects. The City of
2 Santa Barbara does not support language in the proposed
3 regulations which requires a full solid waste facility permit
4 for the composting of high quality biosolids.

5 The draft regulations do not take into account
6 scientific studies and risk assessment studies which show
7 biosolids to have low risks associated with their use as a
8 feedstock for composting. The proposed regulations respond
9 to public perception rather than scientific data. In doing
10 so they give unwarranted credibility to the public view that
11 biosolids are a toxic waste.

12 If promulgated, the proposed regulations will
13 burden municipalities and sanitary districts with excessive
14 burden of duplicative regulations which we cannot afford.
15 Increased expense for composting operations will limit the
16 ability for small local composters to compete with large
17 regional operations. This will increase the distance which
18 biosolids must be hauled as well as increase in the cost for
19 composting of biosolids. Increase in the cost of composting
20 biosolids encourage their disposal in landfills.

21 I strongly urge you to adopt language which
22 regulates biosolids according to their quality and which
23 places clean biosolids in a tier equivalent to the tier in
24 the draft regulations for the composting of food processing
25 residuals. Thank you very much.

1 HEARING OFFICER HUMPERT: Thank you very much. Our
2 next witness is Don Rebeck, private citizen.

3 MR. REBECK: Mr. Humpert, and other members of the
4 Waste Management Board. I want to thank you for this
5 opportunity to make these comments today. My name is Don
6 Rebeck, I'm from San Juan Capistrano. I'm a retired
7 businessman having sold my manufacturing business a year ago.
8 I'm currently involved with the Southern California Alliance
9 of Publicly-Owned Treatment Works, otherwise known as SCAP,
10 as a part-time assistant in the administrative office.
11 However today I'm not testifying in behalf of the Alliance
12 nor of any other organization. There will have been adequate
13 testimony from this section by the end of this hearing.
14 Rather I want to speak as a private citizen who after almost
15 30 years of owning and operating a small manufacturing
16 business knows what burdens can be imposed by overregulation.

17 Although I could speak for hours on that subject,
18 that's not why I'm here, I want to talk about biosolids. I'm
19 not going to offer any scientific data, that's beyond my
20 realm. Nor am I too familiar with the acronyms in the
21 special language used in the industry, I just want to give
22 you some grass roots, down and dirty information for the
23 record, and hopefully this personal experience will be
24 considered appropriate testimony.

25 If someone had told me 30 years ago that they were

1 putting the solid by-product of a sewage treatment plant on
2 the land as fertilizer I would have said, "Not in my backyard
3 you don't." That was 30 years ago. 29 years ago I bought a
4 brand new home on top of a hill in San Juan Capistrano. And
5 as is the case with many hilltop lots, grading had scraped
6 off all the top soil. So our planting surface was not too
7 conducive to growing grass. There are only 15 homes built on
8 this street that ended up in the cul-de-sac just up from my
9 house.

10 After moving in I met some neighbors, three of whom
11 became very good friends. One was a retired, or a
12 semi-retired owner of a cheese factory, he used this house
13 only as a weekend home.

14 The second was the town's mayor, who like his
15 father and grandfather before him had grown everything from
16 beans to oranges in the bottom land below us.

17 Third was a young man who had been contracted by
18 the City's Department of Public Works from the County of
19 Orange to assist in the area with water-related problems.

20 All three had completed their landscape and on many
21 occasions badgered me to get my place in shape. "Too busy,"
22 was always my answer. "I'll get to it soon," was the answer I
23 gave 'em because I was too busy with my business.

24 One day I came home from work to find in my
25 driveway piled over the head high from the house to the

1 street this dark, smelly, blackish stuff completely blocking
2 my entrance to the garage. I knew what it was because the
3 neighbors had quote, "threatened to do it if I didn't get my
4 landscaping done." They had gone down to the treatment plant
5 at Dana Point and brought a dump truck full of dried sludge
6 and dumped it in my driveway.

7 Parking on the street I got out of the car and
8 quizzically looked around, no one in sight. "Some joke," I
9 thought. And by the way, this wasn't the composted biosolids
10 we're talking about today, it was just good old 1965 put it
11 out in the sun dried, digested sludge. I soon saw the
12 culprits peeking out from behind their houses. And after
13 some snickering and all that action and language that goes
14 along with the practical joke, they were all three over there
15 with their wheelbarrows and shovels.

16 To make this story a little shorter, we carted the
17 load to where the front and back lawns were to be and
18 ultimately got it raked out, tilled, and the soil, and
19 seeded. I ended up with a beautiful healthy lawn that's
20 still there even though as time will have it it's mostly
21 Bermuda grass now.

22 On at least two occasions after that, in the days
23 when you could still do this down at Dana Point, another
24 neighbor and I drove to the same treatment plant on the
25 weekend and brought back a pickup load of that stuff that,

1 with the help of our sons we spread on our lawns and gardens.
2 To me it's unfortunate that with the changes that come with
3 progress we can no longer do that. So what's the point of
4 the story? I'm 65 years old, live in the same house, and I'm
5 still alive. My number one son, he was three at the time.
6 He played in the backyard throughout his childhood and now
7 he's six foot five, 240 pounds, strong as an ox. My second
8 son born four years later, grew up to be a class discus
9 thrower and he played in that backyard.

10 The change of attitude on my part, that is from
11 absolute rejection to a position of supporting the reuse of
12 biosolids which I'm here today to support was the result of
13 appropriate education. In my case it was learning in its
14 purest form, personal experience. But not all can find
15 themselves with three practical joking neighbors. To most
16 it's a question of learning from the efforts of those
17 involved in the educational process. Schools and research
18 universities, in our case associations, agencies,
19 environmental groups, private companies and this Board all
20 who take the mandate to recycle as a serious and important
21 contract.

22 Years ago when I taught school in the Los Angeles
23 City School System I had a philosophy. It was, my job was to
24 bring students to my level of understanding. That's what I
25 was being paid to do. I wasn't to reduce my standards to

1 their level. Wouldn't that be caving in to ignorance?

2 Today we're faced with furthering an educational
3 task started not too long ago to convince all that we no
4 longer live in a throwaway society. In this process we
5 cannot give in to fears and public perceptions founded in
6 ignorance and still further the environmental goals that
7 necessity commits us to.

8 Along with others here today, as a concerned
9 private citizen I request, respectfully request that this
10 Board reexamine the level of regulatory surveyance upon which
11 it has placed composted biosolids, for not to do so will
12 without a doubt undo a great deal of the work that has been
13 done to date in this area.

14 I thank you for this opportunity. And by the way,
15 you know that young man for the county who was assigned to
16 San Juan Capistrano, he, too, retired a couple of years ago.
17 And after 25 years as the manager of the South Coast Water
18 District he's past president of CASA, the California
19 Association of Sanitary Agencies, he's about to retire again
20 as Chair of the California, Nevada section of American
21 Waterworks Society, and is currently executive director of
22 SCAP. He's also a good neighbor. Thank you.

23 HEARING OFFICER HUMPERT: Thank you, Mr. Rebeck.
24 That was a very interesting story. I'm sure you have some
25 very forward looking neighbors.

1 Our next witness is Mr. Don Gabb, East Bay
2 Municipal Utility District.

3 MR. GABB: Thanks. That's a tough act to follow.
4 My name is Don Gabb from East Bay Municipal Utility District.
5 The East Bay Municipal Utility District's wastewater
6 treatment plant serves approximately 600,000 people in a
7 service area that extends from Richmond to San Leandro along
8 the east shore of the San Francisco Bay and produces
9 approximately 50,000 tons of biosolids per year.

10 Traditionally East Bay MUD has disposed of most of
11 its biosolids in a landfill. Starting in 1983 East Bay MUD
12 has operated a composting facility on site of the wastewater
13 treatment plant, reusing approximately one fourth of its
14 biosolids. We realize that biosolids recycling projects have
15 received resistance from the public in some communities and
16 there have been poorly managed biosolids projects that have
17 validated this resistance.

18 We are aware that the benefits that can be had by
19 requiring biosolids composting operations to meet the
20 California Integrated Waste Management Board's highest
21 standards for composting operations. These standards can
22 eliminate poorly operated facilities if vigilant enforcement
23 is available, and can establish a level of quality that could
24 ease the public's fears of biosolids composting.

25 Unfortunately California Integrated Waste

1 Management Board's requirement for a full solid waste
2 facilities permit for all biosolids composting operations can
3 also send a negative message to the public that all biosolids
4 recycling projects are potentially dangerous. This message
5 could reduce the public's acceptance of biosolids recycling
6 projects, reducing availability of biosolids recycling sites,
7 and the market for biosolids products.

8 EPA's extensive work in peer review in
9 developing the 40 CFR 503 regulations concluded
10 that biosolids properly managed are not only safe but a
11 benefit to the environment. We recommend that the tier
12 level for each biosolids composting operations be
13 individually assessed against a scientifically-based criteria.
14 The criteria would consider actual risk to the environment
15 based on such factors as biosolids feedstock quality,
16 site location of the facility, quality of operating staff
17 and procedures, quality of equipment and technology used,
18 etcetera. We at East Bay MUD would be happy to assist in
19 developing this criteria with California Integrated Waste
20 Management Board staff. Thanks.

21 HEARING OFFICER HUMPERT: Thank you. Our next
22 witness is Stan Dean, Sacramento Regional County Sanitation
23 District.

24 MR. DEAN: My name is Stan Dean and I'm with the
25 Sacramento Regional County Sanitation District, and I am the

1 Biosolids Program Manager. In July we submitted oral and
2 written comments on the previous version of the regulations.
3 Unfortunately it seems that our concerns were not addressed
4 in the current version, nor in the initial statement of
5 reasons.

6 Today I would like to talk about two issues in
7 particular, placement of biosolids on the top tier, and also
8 more stringent regulations than 40 CFR 503. Additional
9 comments are contained in our written testimony.

10 The district is opposed to placement on the full
11 solid waste facilities permit tier. The Board has not
12 provided any scientific evidence that supports placement on
13 this tier. The requirement, quite frankly, is unreasonable,
14 is excessive, and severely discourages biosolids composting.
15 It could very well be the factor that keeps the district out
16 of the composting business altogether. Several reasons for
17 our positions I would like to mention.

18 In California biosolids compost facilities are
19 already covered by federal regulations, by local land use
20 agencies, regional water quality control boards, air quality
21 management districts, and others. The additional regulatory
22 burden of a full solid waste facilities permit is clearly not
23 warranted, and is clearly not in the spirit of simplifying
24 and streamlining regulations in California.

25 The second point. Biosolids composting conducted

1 by publicly-owned treatment works affords an additional level
2 of protection, because POTWs are staffed with state certified
3 operators and knowledgeable management personnel. POTWs are
4 knowledgeable in process operations, maintenance, monitoring,
5 reporting, recordkeeping, and safety practices. Most
6 biosolids compost operations will begin with a Class B
7 feedstock. This is a feedstock that is already treated to
8 significantly reduced pathogens, and is already suitable for
9 beneficial use.

10 This fact is compelling evidence that biosolids
11 composting does not pose significant risks. In placing
12 biosolids composting facilities on specific tiers
13 consideration needs to be given to a number of variables
14 including the level of treatment of the feedstock, the size
15 of the facility, operator capabilities and other permits
16 which are already required.

17 A suggested methodology for placement on tiers is
18 included in our written comments. Given where we are today
19 our recommendations are as follows: The Integrated Board
20 should suspend the compost regulatory development process to
21 allow a proper methodology for placement of facilities on
22 tiers to be developed and implemented.

23 If this is not possible we have two alternatives to
24 consider. The first is to place biosolids with composting
25 with Class B feedstocks on the same tier as food processing

1 materials. An exception should be made for biosolids compost
2 facilities which are owned and opened by publicly-owned
3 treatment works.

4 The second alternative is to delete biosolids
5 composting altogether from this phase of the regulatory
6 development process and address it at a later time when it
7 can be addressed properly.

8 Now I'd like to turn attention to the second topic,
9 requirements which are more stringent than the federal
10 requirements. The compost regulations contain maximum metals
11 concentrations equal to the lowest number in the range
12 specified in the federal regulations. And they also require
13 a Class A biosolids product to be produced.

14 The regulations state that higher metals
15 concentrations and lesser pathogen reduction are acceptable
16 and I quote, "For disposal, additional processing or other
17 use as approved by state or federal agencies having
18 appropriate jurisdiction," end of quote.

19 In the case of biosolids it appears that a product
20 meeting Class B pathogen levels and higher metals
21 concentrations could still be used because it has been
22 approved by another agencies. However if other feedstocks
23 are mixed with biosolids this issue becomes very unclear. In
24 most cases biosolids compost is produced with other
25 feedstocks by necessity out of the composting process. So

1 this provision is potentially meaningless.

2 The regulations should not than more restrictive
3 than the federal regs. It is not appropriate for the
4 Integrated Board to arbitrarily establish more restrictive
5 requirements than is technically justified. Therefore the
6 regulations must clearly and unequivocally allow metals
7 concentrations and pathogens levels per 40 CFR 503.

8 California can no longer afford excessive
9 regulations. On a statewide basis we must identify our most
10 serious environmental and health problems and allocate
11 resources to these. The level of regulation of biosolids in
12 the current version of the composting regulations is not
13 commensurate with the more pressing issues in the State of
14 California, and is clearly not in the spirit of AB 1220.

15 In conclusion, biosolids are safe, are reliable,
16 are proven, and are beneficial. And the compost regulations
17 should be rewritten accordingly. Thank you.

18 MS. TRGOVCICH: Stan, if you could just kind of
19 hang out for a minute. I was waiting to get a speaker up
20 here who was going to be specific in regards to the existing
21 permits that you're required to obtain, and I want to thank
22 you for being as specific as you've been, and thank everyone
23 who's spoken so far, you're very well organized and very well
24 represented.

25 We've been meeting with many of you, have requested

1 meetings and we've been doing that. We've been receiving
2 comments from many of you out in the composting community,
3 specifically publicly operated treatment works, and one of
4 the issues that we've been approached with is to further
5 explore, examine, the permitting requirements that you're
6 currently subject to, both at the state and federal level.
7 And we are currently examining that, we're looking at ways to
8 distinguish between those permits, the requirements in those
9 permits, as well as the distinguishing criteria that those
10 permits appear to govern compost, not only appear, but they
11 do govern compost quality fairly strictly.

12 And so we are examining that and we will be
13 bringing forward options, we hope, that will look at POTWs in
14 that light to the Board for their consideration along with
15 any other suggestions or options that are being suggested to
16 us, not only today, but in the written comments that we've
17 received. But I wanted to specifically address your issue
18 regarding existing permitting requirements.

19 MR. DEAN: Thank you.

20 HEARING OFFICER HUMPERT: Thank you, Mr. Dean.
21 Okay.

22 Our next witness is Tom Alspaugh, City of San
23 Diego.

24 MR. ALSPAUGH: Mr. Chairman, Mr. Humpert and
25 members of the staff. My name is Tom Alspaugh and I

1 represent the Metropolitan Wastewater Department of the City
2 of San Diego which services 1.8 million customers. We have
3 submitted written testimony. The city of San Diego has, as a
4 primary goal, the beneficial use of biosolids produced by our
5 wastewater treatment plants.

6 Construction is due to start in December on a
7 state-of-the-art biosolids facility at Naval Air Station
8 Miramar that will help us realize this goal. This \$340
9 million facility will be co-located with solid waste
10 facilities in a synergistic, environmentally sound complex
11 that promotes recycling and reuse.

12 As part of this project San Diego has future plans
13 to compost on-site. Off-site composting contractors will
14 also be used as part of our drive to keep biosolids out of
15 landfills. Additionally, composting may become part of our
16 biosolids beneficial use program in the very near future.

17 Requests for proposals are now being prepared to
18 allow the city to evaluate composting versus disposal of
19 biosolids in the landfills as we are currently doing. The
20 City of San Diego will experience unwarranted higher costs
21 for composting, and unnecessary public concern if the Board
22 insists that biosolids composting facilities obtain a full
23 solid waste facilities permit.

24 Placement of biosolids composting facilities on the
25 highest tier results in overregulation and discourages

1 biosolids composting. Similar public concern will arise if
2 the regulations are not as broad as the full range of federal
3 part 503 standards for metal concentrations and pathogen
4 control.

5 The City of San Diego encourages the full use of
6 federal 503 regulations which are based upon scientific data
7 and evaluation and years of peer review. Metal standards for
8 biosolids compost should be based upon all standards allowed
9 in the federal 503 regulations and not only the most
10 stringent standards.

11 The City of San Diego recommends that biosolids
12 compost facilities be placed on the same tier as food
13 processing residue composting facilities when biosolids
14 feedstocks meet the Class B pathogen requirements and vector
15 attraction reduction requirements per the 503 regulations.

16 It is further recommended that biosolids composting
17 facilities which are owned and operated by publicly-owned
18 treatment works be placed on the notification tier. Thank
19 you very much.

20 HEARING OFFICER HUMPERT: Thank you, Mr. Alspaugh.
21 Our next witness is Eric J. Oltmann, Ojai Valley Sanitary
22 District.

23 MR. OLTMANN: Good afternoon, ladies and gentlemen.
24 Eric Oltmann, Ojai Valley Sanitary District. Mr. Humpert,
25 you and I spoke at San Diego a few weeks ago and we talked

1 about some of the concerns that we had about the requirements
2 that were there. And you suggested at that meeting that we
3 address some of our concerns to your Board, the Solid Waste
4 Board that's here. I really thought this hearing today was
5 going to be for that purpose to address the Board and I'm
6 disappointed to find that the Board is not here to hear these
7 comments that are here. There are many of us who come here,
8 and I believe you are suffering a loss in the process because
9 your Board's not able to hear them directly.

10 The Ojai Valley Sanitary District is a small
11 agency. We serve about 25,000 people. We're about midway
12 between Los Angeles and Santa Barbara. We have a small
13 treatment plant. We are currently composting, we've been
14 composting in static piles for about a year. We've been
15 recycling our biosolids as beneficial use as soil amended for
16 about twelve years and we have not landfilled since 1982.

17 Our treatment plant is among the most highly
18 regulated activities in California. Although our agency is
19 very small we are faced with exactly the same permits that,
20 and requirements that the huge plants have. At present we
21 operate under eight separate permits. In many cases we have
22 multiple permits for single purposes. We are subject to
23 numerous inspections by federal, state, and local officials
24 for all of our activities.

25 The district does not understand the need or the

1 purpose for yet another layer of duplicative, unreasonable
2 regulations. The proposed regulations would be a step
3 backwards toward solving our solid waste problems, and the
4 district requests your Board to abandon its efforts to
5 include composting of biosolids at the highest regulatory
6 tier.

7 The Ojai Valley Sanitary District simply does not
8 have the assets to obtain the full solid waste permit the
9 regulations would require. If those regulations are adopted
10 I would recommend to my Board that we abandon our current
11 composting operation and not attempt to obtain that permit,
12 we simply don't have the money or the staff to obtain that,
13 and to resort to landfilling our biosolids as for the first
14 time in 12 years. Again as I said it would be a step
15 backward. Thank you very much.

16 HEARING OFFICER HUMPERT: Thank you. Okay. Our
17 next speaker is Stan Greene, Ojai Valley Sanitation District.

18 MR. GREENE: Mr. Chairman, members of the staff, my
19 name is Stan Greene. I am a Director of the Ojai Valley
20 Sanitary District. I was very pleased to hear Mr. Huff talk
21 about the direction that the Board was moving in redesigning
22 waste regulations. We recognize that there are legitimate
23 concerns over environmental issues. I've been personally
24 heavily involved in environmental activism in our community.
25 What we understand about the impacts of health, welfare, and

1 and the environment are fine, but we have to look at real
2 impacts and not discourage good activities. POTWs as
3 everybody has already said are heavily permitted. I believe
4 the Cassett people can give you a chart that indicates all of
5 the activity, all of the regulatory agencies involved, and
6 there's another one right here that indicates where the
7 overlaps are, where there's redundancy.

8 Sludge is actually part of the regulated process
9 and is heavily regulated with our existing permits. We're a
10 small agency as Mr. Oltmann said. We have about 11,000
11 ratepayers, and everything that we do impacts the rate. The
12 impact of this regulation on cost will be significant enough
13 to raise the question of the viability of the compost at all.
14 That's quite significant because this would deny emphasis of
15 our community on meeting AB 939 directives. We would like to
16 divert the sludge as we have been. We would like to divert
17 the green waste which is about 30 percent of the solid waste
18 stream.

19 This composting system is an excellent way to do
20 that. It actually completes the cycle and puts this material
21 back into the food chain. I can't really ask for a more of a
22 win-win situation than that. There probably are many cases
23 of violations, we'll be willing to accept that, but you're
24 dealing there with compliance. You're not dealing with
25 permit or rule problems. Compliance can be taken care of by

1 enforcement of existing rules.

2 We recommend that some criteria be established, as
3 I believe you've already indicated you'd be working on before
4 the process or before the tier level is established for a
5 particular site. That would allow you to perhaps review a
6 checklist that the agency is willing to work with you on,
7 that would allow you to determine whether or not the
8 circumstances and the feedstock would warrant a higher level
9 of control than the minimums.

10 Clearly sites that are owned and operated by POTWs
11 are already heavily regulated. Everybody is trying to make
12 that clear. Our recommendation would be to redo the sludge
13 composting area of this regulation and to consider the
14 existing regulations as I know you're going to do, and
15 consider the negative impacts on this regulation as
16 presented. Thank you.

17 HEARING OFFICER HUMPERT: Thank you, Mr. Greene.
18 Could I ask you just a clarifying statement?

19 MR. GREENE: Sure.

20 HEARING OFFICER HUMPERT: You mentioned something
21 like, I guess, maybe a technical document that we would be
22 given to with the local enforcement agencies, is this
23 essentially what you're recommending rather than regulation?

24 MR. GREENE: I'm not sure what you're referring to.

25 HEARING OFFICER HUMPERT: A technical guidance

1 document, document that maybe the Board would develop and
2 submit to the --

3 MR. GREENE: Oh, I think it was already mentioned
4 that if criteria could be set where we could just go through
5 and say, yes, we do that, or we don't do that, weigh those
6 criteria, and then people who fall below a certain threshold
7 would go to the lease regulation and then be, there could be
8 regulation --

9 HEARING OFFICER HUMPERT: Okay.

10 MR. GREENE: -- in between. That would probably
11 eliminate starting this process which is a lengthy one and
12 would say we can short circuit that process by taking some
13 people out of the loop that really we don't have to bother
14 with. And that's where we think the POTWs fit.

15 HEARING OFFICER HUMPERT: I see. Fine. Thank you
16 very much.

17 Our next witness is Ben Price, the Merriwood
18 Corporation.

19 MR. PRICE: Good afternoon.

20 HEARING OFFICER HUMPERT: Good afternoon.

21 MR. PRICE: My name is Ben Price and I am a
22 consultant with the Merriwood Corporation. Let me give you
23 just a little background. Prior to that and about for the
24 previous ten years I was the general manager of a public
25 agency who was actively involved in both composting and

1 verma-composting, so it's a topic that's near and dear, and
2 one that I'm pleased to be here to talk to you about.

3 But before I do that may I just say that I share
4 Eric's disappointment, I think we all came up here to talk
5 with the Board, and at the risk of offending you, and I
6 certainly wouldn't want to do that, it would be, it might be
7 as effective with a 29 cent stamp as opposed to the
8 round-trip airfare and the hours that we're spending here,
9 and perhaps somewhere in today's discussions you might be
10 able to share with us what the schedule will be to address
11 the Board so that we'll know how to do that later on. I
12 think we're all a little surprised that the Board wasn't
13 here.

14 Three things that I'd like to, that I'd like to
15 focus my comments on. First of all, the permitting of
16 composting operations on POTW sites. Secondly, the concept
17 of how we look at a, the unit process within sanitary
18 engineering. I've talked to you about that once before. And
19 then the third idea is how this regulation impacts our
20 ability to sell a product. I think those are three important
21 issues that I've chosen to linger on.

22 First of all, I want to refer you to a report that
23 was prepared, and I, it may or may not have been introduced
24 into the record, so I'm going to leave you a copy here just
25 to introduce it. A report sent to James Strauch on June 20,

1 1994 from Tri Tech which identified all of those regulations
2 that we have referred to starting with, Stan, the number of
3 regulations that we already must comply with. And I simply
4 call that to your attention yet again to point out that
5 Chairman Huff's introductory comments about the goal to
6 prepare intelligent regulations, an admirable goal,
7 absolutely admirable goal, is absolutely what this is about.
8 Here we have a group of regulations, and perhaps they are not
9 complete. I've worked under them, I think they are quite
10 complete, but I think the object here is to find where
11 they're not and plug the gaps, rather than simply blanket
12 another layer across the top.

13 There are some areas where composting operations,
14 when they do fall short, usually fall short, and that's in
15 orders and vectors, and you can pretty much bank on that.
16 And that's an area that we need to pay attention to. A lot
17 of the other things we're talking about are well taken care
18 of.

19 So I would focus your attention, first of all, on
20 the existing regulations and the concept of what is it about
21 those regulations that we're not now covering that we need to
22 cover.

23 Secondly, regarding compost as a unit process, I
24 have been puzzled from the outset that we have selected out
25 of the 30 or 40 or maybe even more unit processes that we as

1 sanitary engineers practice in the treatment of wastewater,
2 that we've selected one to call a solid waste facility and
3 hang a permit on.

4 Now at the risk of inviting you to do more than we
5 already don't want you to do, let me just say that there are
6 a whole variety of unit processes within wastewater treatment
7 that are probably closer to solid waste facilities than the
8 composting operation. All of those things that produce the
9 solids that eventually get digested that eventually become
10 part of the feedstock for composting. And certainly I'm not
11 inviting that either, but I'm suggesting this is an anomaly,
12 in other words, there is not a consistent approach here.

13 And perhaps the most consistent approach is to
14 acknowledge the fact that the State Water Resources Control
15 Board has us firmly about the neck in the operation of these
16 facilities. And there is, there is no doubt when we don't
17 operate them well what happens and you can see clear evidence
18 of that across the industry. So I don't believe that this
19 other regulation we're looking at is going to contribute to
20 the quality of the end product, which I think is what we're
21 all shooting for is end product quality.

22 So in summary of point two as a unit process, let's
23 not single it out of the sanitary engineering business and
24 put it into the solid waste context.

25 The third point, and it's the toughest for those of

1 us that are out marketing. As a consultant I am called on by
2 clients to help them move their final product into the
3 marketplace. And I've had some delightful experiences on
4 both sides of that issue, successes and failures. And
5 starting with wastewater treatment let me tell you that one
6 of the great challenges a few years ago was to create
7 wastewater clean enough to be able to reuse. And let me
8 share the scenario how it goes. You find a person, a high
9 school football field who is willing to take the water and
10 use it in a water reclamation purpose, and you develop that
11 relationship and that context over 12 months or 18 months,
12 it's a long process to raise their level of understanding to
13 the point where you can enter into an agreement to sell them
14 reclaimed water.

15 And what we found we had to do the moment we sold
16 them the reclaimed water we had to tell them, "By the way,
17 you have to apply for a set of waste discharge permits."

18 And they said, "Wait a minute, you just sold me
19 this terrific deal over the last 18 months and now you tell
20 me it's a waste, that I have to permit."

21 There's a real contradiction in terms when we put a
22 solid waste facilities nomenclature on an item that we are
23 hoping to sell that will be beneficially used. That's the
24 toughest.

25 The rest of this is, they are kind of

1 straightforward, almost no brainers, they're scientific,
2 they're based on good science. We're talking about public
3 perception here and that's a killer. If we give the public
4 the perception that we're trying to foist a waste-off on them
5 in the form of a compost that will fly in the face of
6 Chairman Huff's goal number one, 25 and 50, and it just won't
7 happen.

8 So as a result of that I would simply suggest that
9 regarding POTWs that you look at a notification level of
10 permitting, would seem to be consistent at this point. But
11 more specifically look at the regulations that exist now and
12 let's plug the gaps rather than duplicate. Thanks.

13 MS. TRGOVCICH: Mr. Price, I want to thank you for
14 your testimony. Just a couple of things. Since some of you
15 may be leaving as the afternoon goes on, maybe I will take an
16 opportunity to talk about the schedule and kind of what this
17 meeting is and why you see the staff here versus the Board
18 and give you a sense of where we're going.

19 This was a staff public hearing because it is a
20 hearing on the regulations themselves. As a part of the
21 Administrative Procedures Act, the requirements within that,
22 we run through our mandatory comment period and upon
23 conclusion or at some point during, we have a public hearing
24 and that's what this is. And generally these public hearings
25 have always been run by the staff.

1 The regulations themselves, before they can go
2 forward to the Office of Administrative Law for approval must
3 be adopted by our Board. And the process that this Board has
4 in place is a series of committees, the one you're most
5 familiar with which is the Permitting and Enforcement
6 Committee, Chairman Huff who is the Chair of that Committee
7 as well as Chair of the Board. That committee will be
8 hearing the regulations and making a recommendation to the
9 Board. We anticipate that we will be coming back to the
10 Permitting and Enforcement Committee at their November
11 meeting because their October meeting is on the 19th and this
12 hearing is very close to that time, and there are so many
13 issues which you are all bringing up we don't feel we could
14 be prepared to bring these issues back before the committee
15 in such a short timeframe.

16 So we are, we are intending to go to the committee
17 at its November Committee Meeting to seek the Committee's
18 direction. And if desired by the Committee members, the
19 Board's direction during the month of November as well on the
20 many significant issues that you have raised here not only
21 today, but within the context of your written comments as
22 well. Yes.

23 MR. CARTER: How is that specifically also
24 available to any of us at the time it's before the Board? Is
25 it also --

1 MS. TRGOVCICH: These are all opportunities for
2 public input. Every time the Board meets and hears either as
3 a discussion item or as a consideration item on, meets to
4 discuss this topic or any other, those are public forums,
5 that's why this is a board to provide that public forum and
6 that public opportunity for input. So there will be
7 opportunities at both the Committee meeting as well as the
8 Board meeting.

9 I am assuming that all of you are on the mailing
10 list for the composting regulations. If I am assuming
11 incorrectly please notify Jacques Grayber sitting in the back
12 of the room and he will make sure that you get on it, and you
13 will be notified of all upcoming hearings, you will be
14 notified of the meeting of the committee as well as the
15 meeting of the Board.

16 Just for future reference in case you're concerned,
17 and I really, I understand your frustration at not having the
18 Board here to listen to your comments today, we will be,
19 we're taking copious notes here, we have a court reporter and
20 the transcript will be available to anyone. And what we're
21 going to be doing in the coming weeks is we are going to be
22 summarizing all of the testimony and we are going to be
23 meeting with the advisors to the members as well as any
24 member that individually requests a briefing on what the
25 significant issues were that came out of this meeting. We

1 will be providing copies of the tapes. This meeting is being
2 not only transcribed by a court reporter but there are audio
3 tapes as well and copies of those tapes will be provided to
4 any members that requests it.

5 I know that is not a substitute for them not being
6 here today to hear your testimony, but we will do our best to
7 convey those very important issues that you're bringing
8 forward to us to the members, and you will have opportunities
9 not only through public hearings but through the meetings of
10 the Committee and the Board in the future as they hear this
11 item to bring your issues before them.

12 We hope that we can resolve everything that we hear
13 today, but I'm not going to put much hope into that. I just
14 know there's too many disparity opinions here, although one
15 would imagine that everyone out there is an employee of a
16 POTW at this point.

17 But there will be opportunities, and I'd also like
18 to point out that the notice for the October Permitting and
19 Enforcement Committee meeting will also include an item which
20 is going to be an update on this process. We are by no means
21 going to be fully prepared to be able to discuss each of the
22 issues that have been brought before us today or to be able
23 to summarize all of the written comments that we are
24 receiving up until 5:00 o'clock this afternoon. But they
25 will be hearing a status report and it will be more in the

1 lines of the schedule and summary that we're talking about
2 today as well as to apprise them of those items that will be
3 coming before them for their direction in the month of
4 November. Okay.

5 Are there any questions on the process or the
6 schedule? Yes, Mr. Price.

7 MR. PRICE: Would there be a way of knowing ahead
8 of time whether the Board will actually be seated at a
9 hearing? I wasn't notified here and I didn't notice it here.

10 MS. TRGOVICH: Certainly. When you get a meeting
11 notice, for example, and if you take a look at that meeting
12 notice it will always have our letterhead at the top, but
13 generally it will either say, if it's a meeting of the Board
14 it will either say meeting of the California Integrated Waste
15 Management Board or meeting of the Permitting and Enforcement
16 Committee. If it's not a board attended meeting it will
17 still have our letterhead at the top, but it will say public
18 workshop or public hearing on, it won't say meeting of. So
19 if you want a way, I know that doesn't address your
20 frustration you're bringing here today, we will do our best
21 to convey that for you.

22 I can tell you that in the future when you get a
23 notice and you look at it that way you'll be able to tell on
24 that basis. But we'll also do our best in the future since
25 it obviously is a point of confusion here to make sure that

1 the cover letter specifies whether it is a staff meeting or
2 whether it is a meeting to be attended by the members of the
3 committee or the members of the Board.

4 HEARING OFFICER HUMPERT: Thank you for your
5 comments, Mr. Price. It sounded like it did generate some
6 interest here.

7 Our next witness is Ted Cartee, Director of the
8 Ojai Valley Sanitary District.

9 MR. CARTEE: Thank you. Good afternoon, Mr.
10 Humpert, Chair, staff. Yes, and that is Ted Cartee, double
11 E.

12 HEARING OFFICER HUMPERT: Cartee, I'm sorry.

13 MR. CARTEE: I'm a director of the Ojai Valley
14 Sanitary District. Ours is a 3MGD plant. I am in accord
15 with, and support the direction, intended purpose that I
16 understand for your direction, and that it is for higher
17 standards relating to composting and achieving diversion and
18 a beneficial use under your regulation. However composting
19 sludge as it fits within the purposes of AB 939 and in so
20 doing is reducing the quantity of what goes to the landfill
21 and using a resource, resources and recycling.

22 In our case in terms of POTW a particular one or
23 all, and I look at ours in particular, the sludge application
24 comes under the purview not only of this Board as specified
25 in your regulatory requirements Chapter 3.1, Article 1,

1 Section 17859, but it also, these sludge applications come
2 under several other agencies and regulations by those several
3 agencies, including in the larger broad stroke the
4 regulations of the Water Quality Control Board, the
5 California Department of Health Services, and also the Air
6 Boards. And the Air Boards, of course, are state, regional,
7 and local levels.

8 I would primarily ask you to consider a focus that
9 was brought to us by the chairman of the Integrated Waste
10 Management Board earlier this afternoon, Jesse Huff. "The
11 nature of the facility being permitted," I quote, "being
12 concerned with, paying attention to, and paying particular
13 attention to the nature of the facility being permitted and
14 regulated."

15 Taking that into consideration I think should apply
16 across the broad spectrum of POTWs. I would repeat, and I do
17 this just to be a little more specific because I come from a
18 plant where I'm director that we are, in fact, being
19 stringently regulated beyond, and that is more stringent than
20 tertiary treatment of our effluent.

21 Our regulation not only includes the MPDS permits,
22 the county CUP permits and regulations, AB 2588 regulations,
23 APCD and air quality MD regulations, and Clean Water Act 503
24 regulations, but many others that are a part of that, which
25 is a regulatory process both in our county, local agencies,

1 and in the, as in the case, as you may know, federal
2 regulations as our county is coming under the stiff and
3 strict concerns of the EPA in air quality regulation which
4 includes odors.

5 I much appreciated the opportunity that I had in
6 the few weeks prior to this in asking questions of you and
7 your staff. And I appreciated working back and forth to
8 clarify best I could what we were coming to work on together
9 in a process of getting a better understanding. And I
10 appreciated how clearly your intention and your actions are
11 in that direction. And I appreciate the clarification about
12 how it's furthering, and it's going to go further in this
13 process.

14 But specifically one point that was made clear to
15 me is that some of the information that is, which is specific
16 to why some of the Board that you work with feel that it is
17 appropriate to require the highest tier for POTWs in this
18 tiering approach which is for streamlining and cost
19 effective, I hope, in that there is information and data
20 which supports that position of the higher, highest tier, and
21 the across-the-board requirements for POTWs.

22 However, it was also said by the staff, that's not
23 available at this time for us to review. And I do look
24 forward to having access to that after you all have reviewed
25 it adequately. However I would like to present some specific

1 data that we do have that supports my position and several
2 others that there is, as Chairman Huff indicated, reason to
3 look at the nature of the facility being permitted and
4 regulated. I have here a quote from the Federal EPA, I would
5 state first before the quote that over the past many years
6 there has been consistently demonstrated that biosolids
7 recycling is both safe and beneficial. This research
8 strongly supports the findings of the U.S. Environmental
9 Protection Agency quote, "In fact, in all the years that
10 properly treated biosolids have been applied to the land we
11 have been unable to find one case of illness or disease that
12 resulted." That's from Martha Prothro, former Deputy
13 Assistant Administrator, U.S. EPA.

14 I'd like to quote three or four other specific
15 findings, and as I say I look forward to hearing findings
16 that express otherwise.

17 Finding one,

18 "There were no observed differences
19 between disease occurrences in domestic
20 animals on farms using biosolids and on
21 control farms. Similarly there were no
22 significant differences in the presence
23 of adverse effects of residents of either
24 farms using biosolids or the control
25 farms. Biosolids were also found to be

1 effective in increasing crop yields.

2 Source: Comprehensive Health Effects
3 Study Comparing the Health Status of
4 Residents Living on 47," count that, "47
5 Farms Using Biosolids Compared to 46
6 Control Farms."

7 This is a 1985 study sponsored by the EPA.

8 "Finding, run off from pasture
9 receiving a surface application of
10 biosolids exhibited the least overall
11 potential for pollution when compared
12 with pastures, pasture land that received
13 applications of dairy, poultry, manure or
14 commercial fertilizers.

15 "Source: One of the conclusions from the
16 1985, 1984 article in the 'Journal of
17 Environmental Quality' by R.V. McCloy and
18 R.O. Haig.

19 Three:

20 "Finding: In recent years crops,
21 crop yields on biosolids improved farms
22 in Yuma, Arizona have as much as 85
23 percent higher yield crops than on soils
24 receiving commercial fertilizer. In
25 addition, no increase in metal

1 concentrations in the plant tissue was
2 observed.

3 Source: "WERF Report 1993."

4 I have several other of those sorts of examples,
5 but my point is I'm looking forward to there being data that
6 would support a different position with regard to that. I'm
7 also looking forward to your considering that in terms of
8 tiering that somewhere between notification and a different
9 lower tier orientation for POTWs, and in that I am
10 specifically concerned about POTWs like ours which has the
11 composting on site. Thank you.

12 HEARING OFFICER HUMPERT: Thank you, Mr. Cartee.
13 Before you go I'd like to clarify, I guess, one of the
14 statements that you made, at least give you our position on
15 it. And legal staff can correct me if I'm wrong, but you
16 mentioned that there was documents that were not, we said
17 that there were documents that were not available to you.
18 The rulemaking file is open to the public at any time. If
19 these documents are in the rulemaking file such as public
20 comments to us, those are available to you. The situation
21 may be at this time since we have received so many comments
22 that these comments have not been logged in and so they are
23 very, it's very difficult to allow the public to see them.
24 As soon as they're logged in and they're organized those are
25 available to you.

1 So the, like I say, the rulemaking file is a public
2 document and is available to the public.

3 MR. CARTEE: Good. Scott, could you help me follow
4 up on that?

5 HEARING OFFICER HUMPERT: I'd be very happy to.
6 One other thing, too, if you do have information like you
7 were listing there, evidence, will you supply that to us?

8 MR. CARTEE: Sure, yes, indeed. Thank you.

9 HEARING OFFICER HUMPERT: Thank you very much. Our
10 next witness is Reva Fabrikant, City of Los Angeles, Southern
11 California Compost Coalition.

12 MS. FABRIKANT: Good afternoon. I hope you can
13 hear me, I'm sort of losing my voice right now.

14 HEARING OFFICER HUMPERT: Sure we can.

15 MS. FABRIKANT: I'll make my best efforts here. My
16 name is Reva Fabrikant. I'm here really wearing two hats.
17 I'm going to start off talking for the City of Los Angeles
18 who I currently work for in biosolids management at Hiperian
19 Treatment Plant. And then after I finish comments for the
20 city I will be talking for the Southern California Compost
21 Coalition, both of whom are related.

22 To start with I would like to commend the Board and
23 the staff for their efforts in putting together these
24 regulations. This is a very tough job, and one of the parts
25 I think that make it difficult is that there is a lot of

1 repetition. One of the things I learned as a teacher, as a
2 student, as someone who works for regulators and for the
3 city, is that repetition is important because it makes things
4 kind of stick into your head. So I'm about to repeat a
5 little bit of what's been said already and hopefully give you
6 some new information as well and an added perspective.

7 Now from the perspective of the City of Los Angeles
8 we did send in our comments, but the city still felt it was
9 important for me to come up here and reiterate several
10 points. One of the main points I'd like to make is that the
11 city as of November, 1994 has been beneficially reusing
12 biosolids, all of our biosolids. We've gained a lot of
13 experience in beneficial reuse.

14 One of the main things we've learned is that a good
15 quality control program is what makes your program work.
16 It's not more regulations, it's not more paperwork, it's
17 quality control, which amounts to enforcing regulations and
18 having inspectors go out and look at the programs that you're
19 running regularly. We in the city do that, we have an
20 inspector that goes out to all our contractors, that way we
21 can make sure that we're all in agreement in what we're
22 doing.

23 So on that note I would like to say that the city
24 does not support a solid waste facility permit for biosolids
25 composting facilities. If more regulation is needed or the

1 Board would like to have a tighter rein on what's going on
2 with biosolids composting facility, greater inspection is
3 probably what's needed, not greater permitting. Excuse me.

4 In addition, we would also like to say that the
5 metal standards for biosolids compost should be based on the
6 metal standards as they are listed in the 503 regulations.
7 EPA spent a lot of time, a lot of effort doing a peer
8 reviewed health assessment that is very respected in the
9 biosolids community, therefore we would like to ask that
10 those regulations, that the information that's available in
11 the 503s be used with respect to biosolids compost
12 facilities.

13 And I would like to read one particular comment
14 that the city made in their letter that's relative to Section
15 17859.

16 "Again, sewage sludge composting
17 facilities shouldn't be required to meet
18 the same requirements as mixed solid
19 waste composting facilities. In contrast
20 to mixed solid waste facilities,
21 production and reuse of biosolids is
22 already highly regulated by federal
23 regulations, therefore the sewage sludge
24 composting facility should not be
25 required to obtain a full solid waste

1 facility permit."

2 So now I think I've repeated that enough I'll put
3 on my other hat which is the Southern California Compost
4 Coalition.

5 MS. TRGOVCICH: Ms. Fabrikant, can I ask just one
6 clarification point? You said that the composting of sludge
7 or biosolids should not require redundant duplicative
8 permits. Are you distinguishing between composting by POTWs
9 and other sludge composting operations? I'm just asking are
10 you distinguishing between those two types of facilities?

11 MS. FABRIKANT: I did not mean to in this comment.
12 Other types of composting facilities are regulated by the
13 503s as well.

14 MS. TRGOVCICH: Okay.

15 MS. FABRIKANT: The Southern California Compost
16 Coalition was formed one year ago to expand the biosolids
17 compost, biosolids based compost market in Southern
18 California through public education and public outreach.
19 Participation in this coalition includes representatives of
20 POTWs and sanitation districts which includes the City of Los
21 Angeles, Orange County, and the City of San Diego; also
22 compost industry representatives including Wheelabrator
23 Biogrow and San Joaquin Composting, the University of
24 California cooperative extension, and other interested
25 parties as well.

1 As a coalition we are concerned about the negative
2 impact these proposed regulations may have on the public
3 perception of the beneficial reuse of biosolids. We are
4 asking the Board to revisit the regulations from this very
5 important perspective by asking the following questions:
6 What do these regulations really say about the production and
7 beneficial reuse of biosolids based compost? Do these
8 regulations help educate, inform, and protect the safety of
9 the public, or do they encourage the misperception that
10 biosolids are something to fear? Something we need to be
11 protected against?

12 These, excuse me, did these regulations demonstrate
13 a striving towards consistency between the state and national
14 regulations for biosolids and their products? Do they
15 demonstrate the use of unbiased, scientifically based
16 information or are they caving in to commonly held
17 misperceptions?

18 We are concerned that by placing biosolids
19 composting facilities on the same tier as landfills, and by
20 adopting the most stringent standards of the U.S. EPA 40 CFR
21 503 regulations that these California regulations are sending
22 the wrong message to the public.

23 Placement of the biosolids composting facilities on
24 the same permitting tier as landfills tells the public that
25 biosolids are in the same category as garbage and need to be

1 treated like garbage, buried and forgotten. It tells the
2 public that the nuisances and healthy and safe, and health
3 and safety concerns from these composting facilities are the
4 same as those in a landfill, which to the public is really a
5 dump which no one wants in their backyard.

6 It equates landfills which function as terminal
7 receiving grounds for a multitude of waste types with
8 composting facilities that only accept specific types of
9 resources for the purpose of producing and selling a
10 beneficial product. We will have a very hard time explaining
11 and expanding the biosolids based compost market if we tell
12 the public that the facilities that produce this beneficial
13 product are in the eyes of the law equivalent to landfills
14 that are filled with garbage.

15 The message that California regulators are sending
16 its citizens by only adopting the most stringent pollutant
17 concentration requirements of the U.S. EPA 40 CFR 503
18 regulations is that they don't trust the federal standards
19 even though they are based on a peer reviewed health risk
20 assessment; that for some unspecified reason biosolids based
21 products must be more stringently regulated in California
22 than in the rest of the country. This tells the public that
23 there must be something wrong with biosolids and therefore
24 the best and safest thing to do from the public's perspective
25 will be to stay away from biosolids altogether.

1 If the board is truly interested in developing
2 programs that foster waste stream diversion by expanding
3 compost markets, and in developing regulations that will help
4 create and expand the composting industry as is stated in the
5 initial statement of reasons in Section 17850, then it truly
6 needs to revisit these proposed regulations to see how they
7 will affect the public's perception of the beneficial compost
8 product that we're hoping they will buy. Thank you very
9 much.

10 HEARING OFFICER HUMPERT: Thank you. Looks like we
11 have, I think, maybe 28 speaker slips and we've gone through
12 11 and so we've got a ways to go. Why don't we take a break
13 now about five minutes, that will give our court reporter a
14 chance to reload her machine.

15 (Thereupon there was a brief recess.)

16 HEARING OFFICER HUMPERT: Our next speaker is Steve
17 Stroud is in the audience. Again, we do have a ways to go.
18 I don't think that we're going to finish before 5:00 o'clock.
19 Mr. Stroud from the City of Merced.

20 MR. STROUD: Thank you, we appreciate the
21 opportunity to provide comment on the proposed regulations.
22 As you've indicated I'm Steve Stroud representing the City of
23 Merced. Merced is a city of about 60,000 people in the
24 Central Valley, and certainly share Chairman Huff's concern
25 with the values and the importance of the AB 939 goals and

1 that's really the focus of my remarks today.

2 We're concerned that the proposed regulations will
3 adversely and significantly affect our ability to achieve
4 these diversion goals.

5 We have applied biosolids to agricultural land
6 since 1980. Initially it was part of our MPDS permit and
7 subsequently incorporated in waste discharge requirements.
8 The main feature of the requirements is a biosolids
9 management plan that requires compliance with 503
10 regulations. Based on 1993 loadings the remaining life of
11 our existing agricultural facility is 170 years. So
12 beneficial recycling of biosolids is really not our problem.

13 In order to comply with the 939 goals we must
14 divert significant green waste from the regional landfill.
15 The only way that we can see to do this economically is by
16 composting the green waste. What that requires is a supply
17 of both, excuse me, moisture and nutrients, hence the
18 biosolids.

19 Placing biosolids composting facilities on the
20 highest permit tier would require a full solid waste permit
21 in order for us to mix green waste with the biosolids that we
22 already apply to land. We can apply biosolids under our
23 permit from the Regional Board with no problem for more than
24 a century. We could also, because it's agricultural land,
25 apply and incorporate green waste, but when we mix the two

1 we've got a major problem. We think that that is
2 inappropriate.

3 We suggest that the facilities should be placed on
4 tiers based on the actual risk to human health and the
5 environment, not a one size fits all standard. We recommend
6 suspending the compost regulatory development process, or at
7 least the biosolids portion, to allow development of a formal
8 procedure for evaluating risks of different type of
9 composting operations. Only then can an effective tier be
10 determined.

11 In addition, the metal standards for biosolids
12 compost should be based on the full range allowed in the 503
13 regulations, and not the most stringent of the range
14 developed by EPA. Our concern is that the regulations be
15 proportionate, as I believe Chairman Huff mentioned, to the
16 situation, rather than the one size fits all approach.

17 We further recommend that biosolids composting
18 facilities that are owned and operated by publicly-owned
19 treatment works be placed on the notification tier unless
20 scientific analysis of the feedstocks dictates a higher risk
21 situation. Our belief is that excessively conservative and
22 scientifically unfounded standards only serves to hurt us
23 all. Thank you.

24 HEARING OFFICER HUMPERT: Thank you, Mr. Stroud.
25 Okay. Our next witness is Mark Leary, BFI.

1 MR. LEARY: Good afternoon. My name is Mark Leary,
2 I represent Browning Ferrous Industries where I am the
3 Manager of Regulatory Affairs. I got to apologize to the
4 audience, I don't have one word of biosolids in my comments.
5 I feel like a guy dressed up as Peter Pan to a party to find
6 out it's not a costume party.

7 BFI appreciates the opportunity to comment on the
8 proposed rules concerning the regulation of composting. We
9 strongly support the expeditious development of the
10 permanent, cost effective and environmentally protective
11 standards for composting. We do however, have significant
12 reservations about this version. We strongly oppose the
13 proposed regulatory treatment of agricultural composting
14 operations, and the regulations for facilities classified
15 within the proposed enforcement agency notification tier.

16 In brief, our opposition is based on the following:

17 The proposed rules governing agricultural
18 composting operations creates an unfair and unjustified
19 preferential treatment that would hinder the ability of
20 nonagricultural green material facilities to compete.

21 Secondly, there's no statutory authority for the
22 establishment of regulations that create a notification only
23 permit program.

24 Three, the need for an agricultural composting
25 operation category has not been demonstrated.

1 Four, the proposed restrictions on the amount of
2 compost product that an agricultural composting operation
3 could sell or give away are essentially unenforceable.

4 And four, the proposed procedures for minimizing
5 contamination are insufficient.

6 For these reasons we believe the proposed
7 notification tier provisions for agricultural composting
8 operations should be deleted. Agricultural facilities have
9 failed to satisfy the exemptions set forth in proposed
10 Sections 17855(A)(3) and (4) should be subject to the same
11 requirements as nonagricultural facilities.

12 I'd like to now discuss the basis of our opposition
13 in a little greater detail. These regulations create an
14 unfair and unjustified preferential treatment that would
15 hinder the ability of nonagricultural green material
16 facilities to compete.

17 Under the proposal, qualified agricultural
18 composting operations would be subject to the least stringent
19 notification only permit tier. In contrast, most green waste
20 composting facilities would be subject to either the
21 registration permit or the standardized permit tiers. The
22 criteria for filing for facilities subject to registration
23 permitting, for example, would be far more stringent than
24 those applicable for the notification tier. For example,
25 operators proposing to operate a solid waste facility

1 eligible for registration permit would be required to
2 demonstrate compliance with CEQA, conformance with diversion
3 goals, county solid waste management plan, a general plan, or
4 other criteria applicable in the event that a county-wide or
5 regional plan has not been approved. And identification of
6 either the county-wide siting element, the nondisposal
7 facility element, or the nondisposal facility element or the
8 source reduction recycling element for the jurisdiction in
9 which it is located.

10 The only criteria that would be applicable to an
11 agricultural composting operation are filing requirements, a
12 simple written notification to the local enforcement agency.
13 CEQA and other processing criteria applicable to registration
14 tier facilities would not be applicable.

15 But the greatest inequity in the proposed approach
16 concerns the amount of design, construction, and operational
17 expenses that would apply to green material composting
18 facilities that are not required at agricultural sites.

19 The largest agricultural composters would merely be
20 required to submit a written notification of the location of
21 their operation while a similarly sized nonagricultural
22 operation would be required to submit detailed design and
23 operational plans in order to receive a permit.

24 The operations at a nonagricultural facility are
25 required to be designed and constructed to enhance the

1 lateral drainage of water to control the processed water so
2 it's contained, collected, and disposed, and reused to
3 maintain a minimum grade of one percent in the operations
4 area, to maintain diversion and drainage systems that
5 accommodate the volume of peak flows and surface run-offs,
6 and to control traffic and maintain road surfaces in good
7 conditions.

8 The application of these design and construction
9 requirements at a BFI composting facility in Northern
10 California recently exceeded \$1.25 million. None of these
11 measures are required at an agricultural composting
12 operation, yet the proposed rules allow them nearly
13 unrestricted access to the same feedstock and basically
14 limitless ability to compete with nonagricultural operations
15 in the marketplace.

16 The proposed distinctions between the notification
17 and the registration tiers, much less the notification in the
18 standardized tiers, are so great in the absence of a
19 justification for the proposed approach, so unmistakable that
20 one can only conclude that the proposal has been structured
21 to provide a clear advantage to facilities classified in the
22 notification tier. The equal protection clause of the 14th
23 Amendment of the Constitution provides that "No state shall
24 deny to any person within its jurisdiction equal protection
25 under the law."

1 We believe that the proposed approach would fail to
2 satisfy the Constitutional mandate that similarly situated
3 parties be treated equally.

4 Secondly, there are no statutory authority for the
5 establishment of regulations that create a notification only
6 permit program. As I discussed this point in detail this
7 morning at the regulatory tiers hearing, I'll not discuss
8 this point any further.

9 Thirdly, the need for an agricultural composting
10 operation category has not been demonstrated. The proposal's
11 emphasis upon a simple notification procedure for
12 agricultural composting operations is unprecedented. Most
13 states with comprehensive composting regulations would impose
14 the same standards upon all regulatory, regulated facilities
15 based on feedstock.

16 Generally, the only agricultural facilities that
17 are exempt from composting are those in which the feedstocks
18 arise wholly from farming activity, and the compost product
19 is utilized entirely at the farm site.

20 In short, most jurisdictions have standards
21 consistent with proposed Sections 17855(A)(3) and (4). Here
22 however, no explanation as to how the proposed notification
23 tier approach provides sufficient protection to the
24 environment has been advanced. The proposed notification
25 tier would be much less stringent than a typical general

1 permit. We also note that it is not at all clear that the
2 creation of a deferential standard essentially created for
3 certain agricultural composting facilities can satisfy the
4 necessity criteria of the Administrative Procedures Act.

5 Fourthly, the proposed restrictions on the amount
6 of compost product that an agricultural composting operation
7 can sell or give away are essentially unenforceable. It is
8 often difficult to determine whether a facility complies with
9 standards governing how a product or generated material is
10 distributed. It is of considerable importance, however, that
11 the regulations adequately define terms that are crucial to
12 its proper implementation and enforcement.

13 In that regard we believe that the proposed Section
14 17852(D)(2) would essentially establish an unenforceable
15 standard. Section 17852(D)(2) is vague because it fails to
16 establish how the limitation, no more than ten percent or
17 5,000 cubic yards, whichever is less, of compost product may
18 be sold or given away would apply, by failing to define
19 compost product, and to establish an applicable timeframe.
20 In short, how the quantities of compost product and the
21 products distributed off-site will be determined is not
22 clear.

23 Perhaps more importantly in the absence of any type
24 of reporting or notification requirement governing
25 off-premises sales or giveaways of compost, the proposed

1 restriction is in essence unenforceable. There will simply
2 be no practical way for the Board or an enforcement agency to
3 enforce the criteria. Indeed it appears that no enforcement
4 mechanism is intended.

5 The cure for vague regulation is the development of
6 objective, technically justifiable standards that are both
7 understandable and readily enforced. It will be quite
8 difficult to construct and implement a system that insures
9 compliance in the proposed Section 17852(D)(2). The mere
10 possibility that agricultural facility produce compost could
11 flood the market alone justifies rejection of this proposed
12 approach.

13 I appreciate that I've offered a number of comments
14 that have been fairly critical of the proposed approach,
15 however in our written comments we have proposed new language
16 in an attempt to be constructive that addresses the concerns
17 we have raised.

18 In conclusion, BFI strongly supports the
19 promulgation of environmentally protective, understandable,
20 and fair compost facility standards. With the exception of
21 the issues discussed above we believe the proposal is
22 conceptually acceptable.

23 We do not, however, believe that the proposal in
24 its current form would create fair criteria for the
25 regulation of all composting facilities. Our proposed

1 revisions would create an even playing field and assure the
2 facilities not be the source of nuisances or environmental
3 problem. Thank you.

4 HEARING OFFICER HUMPERT: Thank you, Mr. Leary.
5 Our next witness is Steven Sherman, California Organic
6 Recycling Counsel.

7 MR. SHERMAN: Mr. Chairman, Mr. Humpert, and
8 members of the staff. We've been -- my name is Steven
9 Sherman, I'm Policy Co-Chair of the California Organics
10 Recycling Counsel. I'm also managing partner of Applied
11 Compost Consulting in Berkeley. Today I'm here representing
12 CORC, California Organics Recycling Counsel, which consists
13 of about 600 generators, processors, and users primarily in,
14 and end users of compost products primarily in California.

15 We've commented many times on different drafts and
16 I want to first commend the Board and Board staff on getting
17 very close on balancing and thinking through very complex
18 issues. And I really do commend the effort. I'm going to
19 limit my comments, my oral comments to tiered permitting and
20 exclusions and one definition.

21 First, at the outset I want to say that I'm not
22 making any comments about biosolids. We didn't invite, and
23 I'm glad to see so many individual biosolids facilities here
24 commenting on that issue.

25 On tiered permitting we recommend that in order to

1 make more meaningful distinctions between the tiers, between
2 smaller, more benign facilities and larger scale facilities
3 that have the potential for more environmental, potential
4 environmental impacts that we recommend the following:

5 At the notification level to, to expand the green
6 material composting facility notification level up to 10,000
7 cubic yards on site at any one time. That translates to less
8 than three acres of active compost generally. As well as at
9 the notification level to allow for a limited amount of what
10 we're calling vegetable material, which I'll provide a
11 definition for in a minute.

12 What we're calling for at the notification level on
13 vegetable material is 2,500 cubic yards of vegetable material
14 on site at any one time provided that it's mixed with three
15 times that amount of green material. So in other words, at
16 the notification level we would have, we would allow for
17 10,000 cubic yards of green material or 7,500 cubic yards of
18 green material mixed with 2,500 cubic yards of vegetable
19 material.

20 On paper it actually comes out easier than what I
21 just presented. At the registration level which is currently
22 for green material, 10,000 cubic yards, we recommend
23 increasing that to 20,000 cubic yards of green material,
24 feedstock, and active compost on site at any one time.
25 Continuing to allow the vegetable material or food processing

1 material feedstock at the level that you have, which was
2 10,000 cubic yards, and allowing also a small amount, we're
3 suggesting 500 cubic yards, it's open, but allowing some
4 small amount of animal material, biosolids, or mixed solid
5 waste feedstock to allow for limited experimentation. We put
6 a limit of 500 cubic yards there, very small.

7 We've all grappled with, tried to deal with and
8 come up with some words for what do we call food processing
9 residue. There's the processing residue from canneries, but
10 then there's food from supermarkets. So we were trying to
11 draw more of a distinction between those rather than what the
12 current draft says. So we came up with two categories,
13 vegetable material composting facilities and food material
14 composting facilities, vegetable material being a subset of
15 the food material category.

16 Vegetable material composting facilities would
17 accept any preconsumer and postconsumer material derived from
18 plant, from plant trimmings. That does include certain types
19 of food processing residues, it also includes wilted lettuce
20 from the backs of supermarkets. In that category of
21 vegetable material we would go, also like to see some
22 provision for accepting clean, wet or waxed corrugated
23 cardboard that's been cogenerated and separated along with
24 the food material, as well as some other types of source
25 separated paper.

1 The inclusion of these types of paper and the form
2 in which they're generated is important because there are a
3 number of composting facilities that are now composting those
4 materials. Those facilities compost source separated organic
5 material, it's food material, some limited amount of source
6 separated paper that's usually cogenerated with food
7 material. You think of like a supermarket that has some
8 waxed corrugated that, or wet, by wet I mean that it's come
9 in contact with food, and so to be able to compost a box that
10 contains wilted lettuce along with the cardboard that it
11 cannot be recycled, that's not a mixed solid waste facility
12 and shouldn't be treat as such.

13 On the subject of exclusions, well first on the,
14 back on the tiered permitting, I think we've come a real long
15 way on that, and I thank the many efforts of staff on that,
16 in that regard. On the subject of exclusions, one that may
17 have just slipped by that I'd like to bring up is on the
18 Parks Homeowners Association exclusion. We believe that that
19 should be expanded to include other types of organizations,
20 facilities such as universities, schools, hospitals, golf
21 courses, industrial parks, and other commercial
22 establishments that generate and compost material on site.

23 And we recommend raising that exclusion to 500
24 cubic yards from the current 250 level, and that for the, for
25 otherwise if it's at the 250 level there are a number of

1 these types of organizations and facilities that are
2 generating more than that, and I just don't think that the
3 Board wants to be in the business of regulating those types
4 of organizations as solid waste facilities, rather this is an
5 opportunity for the Board to provide some technical
6 assistance to these types of organizations.

7 All right. Here we go, agriculture. Two primary
8 points. In the current draft animal manure is considered
9 green material. CORC believes that animal manure generated
10 by agricultural operations should not be regulated as solid
11 waste. This would entail if, if manure is regulated as solid
12 waste this would entail having the Board regulate thousands
13 of dairies, poultry operations, feed lots, stables, race
14 tracks, and others as solid waste facilities.

15 We believe that these operations deserve technical
16 assistance in dealing with manure management problems, and
17 that the questions surrounding farm manure management issues
18 are best left to the Department of Agriculture and other
19 departments rather than the Integrated Waste Management
20 Board.

21 Now many of these operations, I think of dairies in
22 particular, lack sufficient bulking agent on site to compost
23 their moist androgenous feedstocks, the animal manure. Clean
24 source separated yard trimmings from urban areas present
25 several attractive qualities as a bulking agent for

1 agricultural composting. It helps to bind up the nitrogen.

2 Now several states including New York,
3 Massachusetts, and Vermont are encouraging composting of
4 animal manure with municipally derived green material as a
5 pollution prevention measure. These states focus on
6 pollution prevention through technical assistance, one of the
7 Board's functions, rather than regulating agriculture and the
8 on site management of its residuals as a solid waste
9 enterprise.

10 And my second point. The current draft, if I read
11 it correctly currently, places all agricultural composting
12 operations in the notification tier.

13 MS. TRGOVCICH: I'm sorry, we're trying to get the
14 tape recorder to go, but are you referring, when you say "all
15 agricultural operations," do you mean those, are you making,
16 distinguishing between those that fall under the exclusion
17 versus those that either sell or give away, or those that
18 incorporate green waste? Because there is a distinction
19 there in the current draft, and I'll have Scott describe the
20 distinction, but the distinction basically lies between
21 selling and giving away and the incorporation of non-ag
22 green.

23 MR. SHERMAN: Right. I'm referring to specifically
24 the incorporation of non-ag green. My comments that I'm
25 about to give are not about the marketing issue, and what you

1 had on the marketing seemed okay, it's about the source of
2 the green material.

3 HEARING OFFICER HUMPERT: Currently the regulations
4 treat agricultural composting operations that sell their
5 material regardless of whether it's food material or green
6 material as fitting within the notification tier.

7 MR. SHERMAN: Okay. CORC supports this
8 classification for facilities that accept nonagricultural
9 source green material provided that we can be assured that
10 these facilities are not classified as solid waste
11 facilities, and that no solid waste facility permits are
12 required of them. The statement of reasons was not clear on
13 this point.

14 What I recall in there was that it said that
15 facilities at the notification tier may or may not be solid
16 waste facilities. So if assurances cannot be given with
17 regard to the notification tier and as well as thinking about
18 the previous speaker's comments about whether there's
19 authority for the notification tier, we suggest that any
20 agricultural composting operation which is actively
21 composting less than 10,000 cubic yards at any one time of
22 source separated green material, whether it's from an urban
23 source or otherwise, and combining that in equal parts with
24 the animal manure and keeping what you have in there about
25 marketing, that that should be excluded from regulation.

1 The concern here, the issue here is whether a farm
2 which is trying its best to deal with the pollution from its
3 manure and trying, and wanting to keep that manure on site
4 and needing a bulking agent and it has been encouraged by
5 other departments to bring in a bulking agent, green material
6 to bind the nitrogen, and compost it, whether that farm
7 should then be classified as a solid waste facility. That
8 doesn't seem to be the purpose of these regulations or should
9 not be.

10 So something that's that small, 10,000 cubic yards,
11 that's the amount that's similar to the amount that's
12 currently allowed at the notification level so --

13 MR. HUGHES: Mr. Sherman, first of all I have a
14 question and that question is whether or not you have your
15 suggestions in written comment form?

16 MR. SHERMAN: Yes, I do.

17 MR. HUGHES: Okay.

18 MR. SHERMAN: I realize this is a bit complicated.

19 HEARING OFFICER HUMPERT: Well, yeah, the regs are
20 also complicated on this issue, so it's kind of butting heads
21 of complications but --

22 MR. SHERMAN: Let me pull back then. The issue
23 there is addressing likely environmental impacts.

24 HEARING OFFICER HUMPERT: Right.

25 MR. SHERMAN: And that if we can't get, and if

1 something changes on that notification for an agricultural
2 operation, and if we can't be assured that they're not solid
3 waste facilities then we'd like to have some level of
4 exclusion for certain types of agricultural composting
5 operations. That's above and beyond what you have currently.

6 MS. TRGOVCICH: Maybe this will help you out a
7 little bit. The tiered process that we're talking about,
8 you're back into the tiered process now, originally it was
9 called tiered permitting process, and then we changed that to
10 tiered regulatory process, and the reason is that the lower
11 two tiers exclusion and notification are considered nonpermit
12 tiers in that sense. It is, it serves as a form of
13 regulatory oversight, but nonpermit in the sense that there
14 is by no means an inference that anything falling within
15 those tiers would be considered a solid waste facility
16 because in the regulations, in the statute a solid waste
17 facility requires a permit which is the upper three tiers.

18 MR. SHERMAN: Thank you. Then maybe all that's
19 needed in that last couple minutes of my comment is just
20 clarifying the statement of reasons on that.

21 HEARING OFFICER HUMPERT: Let me clarify one thing.
22 There is a caveat to what I earlier said and that is the
23 green material and the food material needs to come from an
24 agricultural source. If it comes from a municipal solid
25 waste, I mean municipal solid waste stream, then we do allow

1 that material to be included into an agricultural composting
2 facility, and I believe it's both green -- no, it's only
3 green, but only up to ten percent of that material can be
4 sold and there's also a cap on how much can be sold.

5 MR. SHERMAN: CORC is fine with the limits on the
6 sale of the product. But on the source of the product we
7 think that that should be open, that the Board should --

8 HEARING OFFICER HUMPERT: To the municipal solid
9 waste stream?

10 MR. SHERMAN: Source separated green material
11 regardless of the site that's not an environmental impact
12 issue. There are a few other comments and they're in
13 writing. Thank you very much.

14 HEARING OFFICER HUMPERT: You're welcome.

15 MS. TRGOVCICH: Scott, just one comment. Mr.
16 Sherman, you mentioned the issue of manure and I just wanted
17 to raise for you that we've received several comments in that
18 regard in terms of the inclusion of manure under the
19 definition of green and we're certainly evaluating that now.
20 We've been working with the regional boards, the state Board,
21 other commentators, and I just want to let you know we will be
22 bringing options back before the Board in that regard.

23 MR. SHERMAN: Thank you very much.

24 HEARING OFFICER HUMPERT: Thank you Mr. Sherman.
25 Our next speaker is Penny Hill, Los Angeles County Sanitation

1 District. Hi, Penny.

2 MS. HILL: Hi, Scott. I work for the Los Angeles
3 County Sanitation District, which is a public agency which
4 provides, among other things, wastewater treatment services
5 to almost five million people in Los Angeles County.

6 Additionally, I've participated on the Compost
7 Advisory Panel since it's inception last year. And I would
8 like to thank the Board for that opportunity if they were
9 here, but since they aren't I'll tell staff that the joint
10 participation that was made possible through the panel was
11 truly unprecedented and hopefully will serve as a model for
12 future regulatory development efforts.

13 My goal today is to impress upon you the need to
14 continue in this joint venture because the regulations are
15 still lacking in a few areas. To the wastewater industry the
16 critical area is that biosolids composting facilities require
17 a full solid waste facilities permit regardless of size
18 whereas other feedstock composting facilities are tiered
19 based on size. This one single requirement betrays a
20 mind-set that biosolids are unsafe, and this is absolutely
21 incorrect.

22 My understanding that the reason for a full permit
23 has more to do with public bias and fear than it has to do
24 with available technical information. And while fear itself
25 may be real, what it's based on is not.

1 It's our responsibility to educate the public to
2 the facts, and in this case the science of biosolids, and not
3 appease fear through overregulation which just results in
4 perpetuating the myth that biosolids is unsafe. This would
5 be a disservice to the public and it would not be responsible
6 in realizing our recycling goals.

7 What we recommend is that biosolids composting
8 facilities, private biosolids composting facilities be
9 eligible for a tiered permit similar to that available for
10 food processing facilities. And that location, or operations
11 located on a POTW site be eligible for an enforcement agency
12 notification at most.

13 POTW facilities are already operating under the
14 purview of the Air and Water Boards and local planning
15 departments, and composting on these sites is part of the
16 ongoing treatment process. The biosolids have not yet been
17 discarded to the solid waste stream and requiring a full
18 permit may result in many instances in diverting this
19 material back to landfill.

20 Two other comments I have, one with respect to the
21 environmental health standards. I appreciate staff's effort
22 in the attempt at allowing full use of EPA part 503 through
23 the change in language, however I fear that it's not clear
24 enough. And at least in the statement of reasons it would be
25 very helpful if 503 was noted and that that was your

1 intention or part of your intention.

2 And the last item has to do with filing
3 requirements for registration and standardized permits. The
4 request for facility information is written such that it
5 includes but is not limited to, and then you have specific
6 information. This is open-ended and unclear with respect to
7 exactly what information is required to constitute a
8 completed application package. And it's recommended that a
9 finite list of required information be determined and
10 included in the regulation.

11 I thank you for the opportunity to comment and I
12 would just like to also add that I too am disappointed that
13 the Board was not here to hear comments from the wastewater
14 industry. We made a special effort to be here today. Thank
15 you.

16 HEARING OFFICER HUMPERT: Thank you, Penny. Okay.
17 Our next witness is John Huelskamp, from Weaver Industry.

18 MR. HUELSKAMP: Good afternoon, Mr. Chairman, Scott
19 Humpert and members of the staff, my name is John Huelskamp,
20 I'm with Weaver Industry, and I'm here to, first of all, I
21 would just want to enter into the record two letters that
22 have been previously sent, one of 'em from Mr. Bill Newland
23 of Biothermic Resource Recovery, dated September 25th, 1994
24 to Scott Humpert, and the other was a letter from our company
25 addressed to Mr. Ralph Chandler, July 19th, 1994 from Tim

1 Weaver of Weaver Industries.

2 I think unlike most of my previous speakers I'm
3 coming here right now somewhat confused because I just talked
4 to Scott and the main thing that Weavers likes to do in the
5 yard waste recycling is mulch it, and I understand that it's,
6 if not decided it's certainly the intention of the Board to
7 put mulching in the same category of composting. And if you
8 get up above 10,000 cubic yards it would be in the
9 standardized composting permit, and this concerns us quite a
10 bit.

11 In general, Weavers has been supporting the Board
12 and the tier process and deregulation and we support the
13 desire to avoid duplication, duplicate regulation and that
14 you actually are supporting, simplifying, and streamlining
15 the regulation process. But we, we're concerned if mulching
16 is going to be considered like composting. Mulching to
17 Weavers, and perhaps there must be some other people in the
18 state, I know Scotts Hyponex speaks highly of mulching.

19 We believe mulching is a process that is much
20 simpler than composting, you don't ever add water, and you
21 don't ever turn the yard waste just for the sake of turning
22 it to decompose it. And by taking this process of mulching
23 we think it's much safer to the environment and shouldn't be
24 regulated as heavily as composting. We've never had a
25 problem with odors because you're not adding water. It's

1 true that the temperature goes above 122 degrees and it
2 appears like that is the main concern that you have.

3 But there are many products that are going to go
4 above 122 degrees in the San Joaquin Valley. I can think of
5 manure, gin trash, gray pumas, green wood chips, just for
6 starters. And I believe we could probably come up with
7 another ten. And what's the magic about going above 122
8 degrees? I don't think that's in itself a good reason to
9 regulate people like us that consider themselves mulchers.

10 And our deeper concern is if you regulate mulching
11 in a large operation, say above 10,000 cubic yards, I
12 wouldn't call that very large, three acres, and they require
13 a standardized permit, I've been also told that this
14 particular site that gets the standardized permit will be a
15 solid waste facility. Well there not too many landowners
16 that want their property permanently labeled or tagged as a
17 solid waste facility.

18 Just like the biosolids people don't want to have
19 the, they don't want to be regulated because they don't want
20 to have the, they're afraid that it hurts their marketing
21 image when it's regulated by the waste industry. I can
22 assure you that landowners don't want to have their land
23 permanently identified as a solid waste facility. So that's
24 a concern on our part.

25 There's another clause in the proposed regulations

1 that addresses chippers and grinders. And potentially a
2 mulcher might slip in here as a chipper and grinder, but he's
3 allowed to store it for 30 days, and we all know that after
4 one or two days or maybe even hours you're above 122 degrees.
5 But I can't imagine chippers and grinders, this 30 days is a
6 real concern.

7 Weaver Industry, in addition to mulching, if you
8 take out 5,000 acres of orchards a year and take it to
9 biomass plants. And 30 days is just completely inadequate.
10 In the future the biomass plants, a lot of them are shut down
11 and a lot of them may only operate in the summer months,
12 you're going to have to hold it for six to nine months for
13 sure.

14 And so I don't know what this is going to mean to
15 chippers and grinders, but perhaps it's, maybe it's a moot
16 point because they're shutting down the biomass plants
17 anyway, maybe we should not worry about this. It's going to
18 be a problem though if you have all of your biomass plants
19 down, you're going to have about three million tons of wood
20 looking for a home. And I don't know what's going to happen
21 to that, but that's a separate issue I suppose. But it does
22 seem to come into this question of how long you can store
23 wood chips.

24 That's probably all I have to say. I would, if you
25 have any questions I'd like to answer them, but we do have

1 two concerns, the temperature being the primary concern on
2 how you describe or composting, and I guess that was the main
3 one, and the time that you can store a product in the, out in
4 the storage site.

5 HEARING OFFICER HUMPERT: Thank you, Mr. Huelskamp.
6 I do have a couple of questions about your process itself.
7 Maybe you could explain a little bit about what your, the
8 process that your material does go through in terms of the
9 time it takes to develop a product, and then also make it
10 some of the temperatures that you keep it at. But aside from
11 that let me just say that it's not our intent to regulate
12 mulchers under these regulations.

13 MR. HUELSKAMP: But what is the definition of
14 mulching, because under your definition it's less than 122
15 degrees?

16 HEARING OFFICER HUMPERT: Well for fear of getting
17 into a discussion on this, let's just say that what we have
18 looked at the issue of how to address mulching facilities in
19 terms of a definition or, and again without actually defining
20 it, you know, bringing the term mulching facilities or mulch
21 into the regulations, rather better defining compost and
22 composting facilities. And if it is not a composting
23 facility then it would be essentially something else which
24 could be a mulching facility.

25 MR. HUELSKAMP: I appreciate your dilemma too

1 because I'm not here to try to tell you how to do it. I'm
2 confused coming up here and I'm sure you have a major
3 challenge, but if there is some way to do it that will keep
4 it from becoming or called a solid waste facility that would
5 certainly be appreciated.

6 I think the consequence of, if mulchers are going
7 to be in some of our sites, what's going to happen is what
8 you've seen happen in San Jose, there's just going to be more
9 and more tons that will be land applied green, and maybe this
10 isn't the best interest, but I'm not so sure that it is, I
11 think it's better to let it sit awhile and get a higher value
12 and you certainly kill a lot of pathogens.

13 I believe there's a major company over in San Jose
14 right now is working on the concept of leaving it set at
15 least for three or four days to go through a heat process to
16 kill pathogens, and I think there's merit in that approach,
17 but it seems to contradict, it seems to fall into the
18 category of composting. Anyway I thank you for your time.

19 HEARING OFFICER HUMPERT: All right. Thank you
20 very much, Mr. Huelkamp.

21 Our next speaker will be Bob Engel of Engel and
22 Gray, Incorporated, if I'm reading this right.

23 MR. ENGEL: Thank you. I guess I should not have
24 rented a convertible this morning. I'm Bob Engel, I'm with
25 Engel and Gray, Incorporated from Santa Maria, California.

1 I'm a private businessman and I don't think I've ever been in
2 a regulatory room where I've agreed with so many public
3 agencies, but I would like to say ditto to all the public
4 treatment work, public-owned treatment works comments that
5 has been said earlier.

6 I must also commend the staff on the progress these
7 regulations have taken since last November. I commend staff
8 on the general direction but not on the time taken. My main
9 comments this afternoon have to do with biosolids composting
10 facilities whereas the regulations continue to refer to them
11 as sewage sludge. I know that was one comment and I'm
12 surprised it hasn't been mentioned, you know, before since
13 I've been sitting here, but I think that they should be
14 referred to as biosolids in the regulations, I think it would
15 be more appropriate.

16 Most specific in Section 17859 that requires a full
17 solid waste facilities permit for biosolids composting. I
18 believe this is overkill for health and safety risks that are
19 not justified or identified. More important is the
20 competitive disadvantage you put a composting operator in
21 compared to other types of operations. I compete with
22 operators that are land to plain biosolids with minimal
23 regulation, they handle and transport the material without
24 the influence and regulatory oversight you are proposing for
25 composters.

1 I also believe that Section 17868.2, that this
2 section should mirror the U.S. EPA 40 CFR 503 regulations, no
3 more, no less excessive, excuse me, no more or no less. It
4 is excessively conservative and scientifically unfounded
5 environmental health standards are not in the best interest
6 of the California environment and the residents. Thank you
7 very much for the opportunity to speak today.

8 HEARING OFFICER HUMPERT: Thank you, Mr. Engel.
9 Okay. Our next witness will be Roberta Larson, California
10 Association of Sanitation Agencies.

11 MS. LARSON: Thank you. Good afternoon. I am
12 Roberta Larson. I'm the Director of Regulatory Affairs for
13 the California Association of Sanitation Agencies. We're a
14 statewide organization consisting of some 90 special
15 districts that provide wastewater treatment, collection,
16 disposal, water reclamation and biosolids reuse services to
17 millions of Californians. I just want to clarify one thing,
18 CASA is not here today nor are our member agencies here to
19 ask you not to regulate us. We concede that some regulation
20 in the biosolids area is appropriate. What we are asking is
21 that you regulate us proportionate to the health and safety
22 and environmental issues posed by biosolids as a feedstock
23 for composting.

24 You are going to hear, you have heard and you will
25 hear from many of our member agencies, their stories and the

1 concerns they have about the regulation as it's currently
2 proposed. What I'd like to do is just hit a couple of themes
3 that I think have been running through the testimony that you
4 have heard and you probably will hear some more before 5:00
5 o'clock.

6 There are about four themes that I see emerging
7 that I think it's important to emphasize. One is the issue
8 of the existing regulatory matrix that's been talked about;
9 the number of permits that POTWs already have to obtain, and
10 other composting operations have to obtain.

11 And we ask that you craft this regulation as you
12 revisit it in the next few weeks and months with recognition
13 of the fact that there are in place regulations from the
14 Regional Water Quality Control Boards, the health
15 departments, county and city land use authorities, the
16 Department of Health Services, Department of Food and Ag, and
17 others that don't come to mind right now. But just that you
18 will keep in mind the fact that there may be a need to fill
19 some gaps and that that ought to be where the regulatory
20 focus is.

21 Secondly, we ask that you take advantage of the
22 scientific and technical information that is available. We
23 can provide that to you. There are independent sources, the
24 U.S. EPA, a number of sources of information that will show
25 and will demonstrate that biosolids are safe, reliable,

1 proven, and beneficial. And we ask that once you've had a
2 chance to look at that information then you assess biosolids
3 against scientifically based criteria based on that
4 information, and consider factors such as feedstock quality,
5 size of operation, quality of operation, and so on, and slot
6 the biosolids into the tiers appropriately based on those
7 factors.

8 A number of the people who have spoken today have
9 given specific concrete suggestions, many of those, there are
10 some differences to them but those all have the foundation of
11 there being some sort of scientific criteria as the basis and
12 we support that.

13 Thirdly, we ask that you try to separate as much as
14 you can the enforcement and compliance issues from the
15 permitting issues. Just ask yourself if the way to get
16 people to comply with regulations is to pass additional
17 regulations, probably not. Probably the way to do it is to
18 think about how we can have better enforcement and compliance
19 to make sure that the regulations already in place are
20 complied with.

21 And finally, the other theme that you've heard a
22 lot about today and is of great concern to us as an
23 organization is the whole issue of public perception and the
24 gap, the lag between reality and what the public may believe
25 or fear. And as an industry we are committed to education

1 and increasing public awareness. We'd like that to be a
2 collaborative effort with this Board. We ask that the Board
3 lead in this area and not follow, and that emphasizing your
4 interest in meeting the 939 diversion requirements and seeing
5 products beneficially reused rather than disposed in
6 landfills, that you would join with us in an effort to try to
7 turn the public perception around so we can do the right
8 thing for the planet, for the ratepayer, for the state, and
9 all feel good about it. Thank you.

10 HEARING OFFICER HUMPERT: Thank you very much. Our
11 next speaker will be Mike Falasco of the Wine Institute.

12 MR. FALASCO: First of all, thank you for taking me
13 out of order. I'll try to keep my comments brief. I have a
14 couple of questions I'd like to ask of the staff afterwards,
15 if I may, just for clarification purposes.

16 The largest end user of compost, California
17 Agriculture, generally endorses the current set of draft
18 regulations. The Wine Institute, California Farm Bureau
19 Federation are on record supporting these regulations. Board
20 members and key staff like yourselves are to be applauded for
21 the many hours of dedication and cooperative spirit
22 throughout these deliberations.

23 Vintners and others farmers all over the state are
24 incorporating organic compost into the soils because it's the
25 right thing to do. Composting is, has both environmental and

1 economic benefits. Plus it fits nicely into our stewardship
2 ethic. These regulations are something that the Board can be
3 proud of.

4 Specifically for agriculture farmers will be
5 assured of large volumes of green material free of
6 contaminants which can be blended in farm generated
7 feedstocks and made into compost. The regs wisely provide
8 that a farmers compost pile may be made up of up to 50
9 percent of what we call in vernacular "clean green."

10 Farmers who have for years been making and selling
11 ag only compost won't have to be unnecessarily burdened,
12 stigmatized for solid waste facility permits. Farmers
13 generate huge quantities of compost feedstock, like wine
14 grape pumps. It makes sense they shouldn't need permits to
15 buy other agricultural byproducts and sell the finished
16 compost to the neighbors.

17 In conclusion, we in the agricultural community
18 strongly urge the Board to avoid greatly revising these
19 regulations in any fashion which compromises agriculture's
20 ability to obtain and use on site, vast volumes of green
21 material, and obtaining and selling agricultural feedstocks
22 without, in either case being stigmatized as solid waste
23 facilities, and be permitted accordingly.

24 In conclusion, I'd like to, if I may, for your
25 indulgence, ask a couple of questions just for clarification

1 purposes. These kind of fall under the area, first under the
2 definition of manure on page 4, line 21. You mention there
3 in the regulations that quote, "Manure is a subset of green
4 material and is regulated as green material," and these are
5 the words that I have confusion with, "Unless otherwise
6 indicated." If that can be clarified I would appreciate it.
7 It's our assumption that if you turn to the excluded
8 operations Section 17588 that the manure from agricultural
9 feedstocks would fit under what you mean unless otherwise
10 indicated. It would be nice if that's double-checked and
11 very, very clear.

12 One further question. Are feedstocks such as gray
13 pumas or agricultural manure, if they are sold or given away
14 and not made into a finished compost initially so if a
15 vintner, for example, sells his grape pumas to his neighbor
16 who then will make it into a finished compost, is that
17 vintner subject to notification? Or is it just the feedstock
18 and the feedstock is unregulated?

19 HEARING OFFICER HUMPERT: These are difficult
20 questions. Well actually the second one is more difficult
21 than the first.

22 The first one, the last phrase in the definition of
23 manure which basically says "unless otherwise indicated,"
24 that's probably an artifact of some regulation that has been
25 taken out previously. I think we allowed a certain amount of

1 feedstock to be considered as either an additive or
2 amendment, and I'm not sure that that language is still in
3 here. And so it probably would speak to that previous
4 regulation. I'll have to take a look at this and I can get
5 back to you on that. That's the only thing that I can think
6 of.

7 MR. FALASCO: Because it is confusing.

8 HEARING OFFICER HUMPERT: Right. And if that is
9 the case as I explained it then I guess we will take that
10 out.

11 In terms of the second one do you want to --

12 MS. TRGOVCICH: In terms of the second one you've
13 certainly raised an issue that hasn't been brought to our
14 attention. Our initial thought is that it's not being
15 composted, that feedstock is not being composted, so if it's,
16 if it doesn't fall under the definition of composting then it
17 wouldn't be subject to the regulatory oversight in the tiered
18 process, but we're going to have to look at that one a little
19 more closely. I hate to give you an off the cuff response
20 like that, but our initial inclination would be if it's not
21 being composted it's not subject to these requirements.

22 HEARING OFFICER HUMPERT: But I would say if it is
23 being composted the location at where it is being composted,
24 that person is controlling that material would have to meet
25 those regulations.

1 MR. FALASCO: There is some natural heating up
2 process that occurs with pumas or manure just by itself, and
3 that could be construed by some as composted. But it really
4 is not a finished compost product, it's just an ag, you know,
5 feedstock.

6 HEARING OFFICER HUMPERT: We'll take a look at
7 this.

8 MR. FALASCO: Thank you.

9 HEARING OFFICER HUMPERT: Thank you very much. Our
10 next witness is Dick Edminster, Alameda County Waste
11 Management Authority. Finally.

12 MR. EDMINSTER: Thank you. I'm coming here today
13 really from the front lines. My agency is currently
14 circulating an RFP for a facility that would compost
15 biosolids and green materials. Incidentally, my agency is
16 not a POTW. We are a joint powers agency that includes the
17 County of Alameda and 14 cities, most of them are not POTWs
18 either.

19 We had initially gotten into this project as purely
20 a green material composting facility. It made a great deal
21 of sense to us to include biosolids, the biosolids providing
22 the moisture content that was helpful to the green waste
23 composting process. And also it served as a model of
24 cooperation among the different kinds of public agencies
25 involved.

1 We certainly are trying to do the right thing and
2 we think you are also. We think the tiered concept is
3 certainly absolutely going in the right direction, we just
4 don't think you've gone quite far enough as relates to
5 categorizing and mixed waste composting facilities as in that
6 category needing a full permit.

7 Essentially we've, for the reasons that have
8 already been stated and are stated in our letter that I
9 handed you earlier today, it would increase the time and
10 costs of development of our facility, it would decrease the
11 value of the product due to these kind of public concerns.
12 We think in the marketing end we would not be able to charge
13 as much.

14 In the real world of competition we're trying to
15 keep the costs of development down and the price we can
16 charge up. We're facing now competition with alternative
17 daily cover for the green material that really, it's really
18 hurting us with the new policy where that count says
19 recycling, and there are lots of other alternatives to
20 composting out there both with biosolids and the green
21 material.

22 We think that the bottom line, I'm not a scientist,
23 but the consultants who advise our agency insist that there
24 is really no scientific basis for your classification scheme.
25 We think that there should be, and that on an interim basis

1 the, the suggestion made earlier of applying the food
2 processing residuals classification scheme would appear to
3 make some sense to us. Thank you.

4 HEARING OFFICER HUMPERT: Thank you, Mr. Edminster.
5 Our next witness is Roger Isom or Isom from the California
6 Cotton Ginners Association.

7 MR. ISOM: Good afternoon, Scott and staff. Thank
8 you for the opportunity to speak before you today and present
9 our comments. My name is Roger Isom, I'm the Director of
10 Technical Services for the California Cotton Ginners
11 Association.

12 And I just want to briefly go over this for a
13 minute how the cotton gin operates. The sole purpose of a
14 cotton gin is simply to remove the lint from the seed cotton
15 coming in. And something that happens is that the stick,
16 sticks, leaves, branches, and other debris that comes in with
17 the seed cotton is removed in that process and it's stored on
18 site. And rather than transport that directly into a
19 landfill, the cotton gins in California do several
20 alternatives to that, one of them is composting. It's an
21 incidental process that only a fraction of our gins actually
22 do. We do several things.

23 But it's an incidental process and we feel it
24 should not be subject to this regulation. We support the
25 approach that the Integrated Waste Management Board has taken

1 with this latest draft, and that only the notification
2 procedures would actually apply. However, it's those
3 procedures that on gins that only do this, and they're
4 getting it directly back to our growers that we would ask
5 that they be excluded from this regulation.

6 We're regulated by several different agencies.
7 Some of the requirements would be required under here we feel
8 this is basically just getting our foot in the door if we go
9 through the notification procedures. It's just one step that
10 later on down the line that the Board will possibly look at
11 bringing us into regulation when we're only doing this only
12 for a partial process and it's not the intent of the cotton
13 gin.

14 We agree that if the intended purpose of the
15 facility was to compost then we would not have a problem with
16 this regulation. But we do not strictly do that to produce
17 compost. So with that, again, we do support the approach
18 that they've taken with this, and that only notification
19 procedures would apply to agricultural composting operations,
20 however we would ask that gins and horticulture operations
21 that it is not the intended purpose be exempt from this
22 regulation.

23 HEARING OFFICER HUMPERT: Let me just explain one
24 thing. Concerning the situation where the material, the
25 compost goes back to the grower, that is currently excluded

1 if it is not sold.

2 MR. ISOM: Okay. We would, we would, even if it is
3 sold, we're talking only just enough to recover the cost of
4 transporting it out to that particular grower.

5 HEARING OFFICER HUMPERT: We could take a look at
6 that. Maybe that would be a, since it's not for profit.

7 MR. ISOM: None of our members who do compost do it
8 for any profit. I mean it's, to be honest with you, it's
9 just a way of getting rid of it rather than transporting it
10 to a landfill. The majority of the cotton gin trash that's
11 produced is put directly back on the farms as a soil
12 supplement even before it's composted. It's done in the soil
13 but there is some that, just due to the sheer volume, that
14 actually ends up being composted.

15 MR. HUGHES: And the cost involved is primarily
16 transportation?

17 MR. ISOM: That would be the only cost. I mean,
18 they sell it for a dollar a ton.

19 MR. HUGHES: Okay. Thank you very much.

20 HEARING OFFICER HUMPERT: The next witness is
21 Michael Cameron, Ora Lora Sanitary District.

22 MR. CAMERON: Thank you, Mr. Chairman, Mr. Humpert
23 and staff. My name is Michael Cameron. I'm the General
24 Manager of Ora Lora Sanitary District. I have only been in
25 the industry a little over a year, before that I was in the

1 private sector so I can't speak to the technical issues of
2 the regulations, but I have surmised them and perhaps I have
3 a little bit different viewpoint than some people before me,
4 although I would ditto what each of them have said.

5 I'm here representing my Board of Directors and our
6 ratepayers, and probably oozing between the cracks will be my
7 own views as a taxpayer. I'd like to tell a little story
8 about three or four things that I've seen since I've gotten
9 into this industry.

10 One, several years ago, like the man from Dana
11 Point, I bought a bunch of stuff that had rice hulls and some
12 ugly black stuff in it and I landscaped with it. They told
13 me it was base sludge. I didn't know what that was. They
14 told me to wash my hands after using it, and my only clue was
15 when my first apples on the apple tree were the size of
16 grapefruits. After that, three years ago I used to give away
17 newspapers to boy scouts and now I pay \$48 a year to have
18 that done by a recycling company, and in my district we
19 charge people \$48 a year to take away their newspapers and
20 recycle.

21 On our plant itself we have a cogeneration facility
22 where we make electric power. We did that so we could use
23 the wasted methane gas and to make a good use of it. But in
24 the ensuing years the Air Board has regulated us to a point
25 where it's no longer economically feasible, so essentially

1 we're going to take those millions of dollars that are in
2 that facility and throw it away.

3 We had some underground petroleum tanks on the site
4 and we were required by a regulatory agency to remove those
5 tanks. We had not levitated them five feet out of the ground
6 before we got another 500 page set of regulations on how to
7 handle aboveground storage tanks which we were in the process
8 of installing. So I'm sort of critical of regulation and I
9 would ask that this Board consider some other alternatives to
10 the regulations they've set forward today. It's easy to be
11 critical, and you guys have a tough job, I recognize it.
12 It's easy to stand here and make cracks at your regulations,
13 and it's hard to carry out your job if you're a regulator,
14 it's like a being a general without a war, you've got to
15 regulate if you're a regulator.

16 But we have put, in order to comply with AB 939 we
17 have put in millions of dollars in recycling equipment and
18 recycling contracts. And we've done a good job of it.
19 Following that we have put more millions of dollars from
20 Alameda County in this co-composting facility which is to be
21 built at the Altamont. We purchased over 1,600 acres through
22 Mr. Edminster's group at substantial cost. So we're ready to
23 compost and at that very moment it seems that some additional
24 layer of regulations is being put forward which makes that
25 process economically not feasible.

1 My job is to watch the dollars for my district.
2 And although we intend to comply with AB 939, diversion of
3 sewage sludge is an important part of that. If it doesn't
4 make sense, and I told Mr. Edminster this on previous
5 occasions, we will not divert it. And as the amount of
6 regulations go up, so does the cost.

7 In looking around the room I felt that there were
8 two groups that are not here, one group is the Board which I
9 too expected, but the other group is those citizens that
10 might be out there that need the protection from these
11 composting regulations.

12 I haven't heard anybody say, "Protect me from these
13 regulations." I think that the free market will do that.
14 Believe me, if you put a composting facility at 4th and
15 Figueroa in Los Angeles the public will tell you about it.
16 The Air Board will take care of it. The Planning Department,
17 there are a million regulatory agencies that are adequately
18 capable of handling this.

19 Moreover, it's really a local issue. If one county
20 wants to put more composting in their county than another
21 because they're better able to do it because of more land use
22 availability, they should have that right to do it. And I
23 don't think it necessarily takes a state group to regulate
24 that process.

25 In summary, I think it's a local issue. I think

1 additional regulation adds cost to the process and really
2 stops diversion. I would ask you that if you want to
3 regulate that you regulate the product and not the process.
4 Regulations are only on books, whether people follow them is
5 another question, but there are liabilities for people who
6 don't follow regulations, not from the regulatory standpoint
7 but from the aspect of the product quality. It should meet
8 certain standards. I conceptually have no problem with that.

9 You can require insurance. You can require any
10 insurance you want, and that helps make sure that the people
11 operating these facilities are meeting the regulations that
12 are promulgated by other agencies. If they don't they're
13 going to get sued somewhere down the line if they don't
14 produce a quality product.

15 And if you must regulate at the level that you've
16 proposed in these regulations I would ask that the 503
17 regulations be followed in their most liberal interpretation,
18 that you put biosolids on the lowest tier. And that if you
19 could, it would be very nice if you could somehow integrate
20 other regulations with this and sort of come up with a one
21 stop shopping. I realize that's a little idealistic but in
22 the, from the perspective of the regulatee it would certainly
23 make our job a lot easier. Thank you very much.

24 HEARING OFFICER HUMPERT: Thank you, Mr. Cameron.
25 Our next witness is Denise Delmatier, Gualco Group for

1 Norcal.

2 MS. DELMATIER: Good afternoon, Denise Delmatier
3 with the Gualco Group for Norcal Waste Systems. Obviously
4 this has been a long time coming as well as this morning's
5 regulatory package and we've been working on these things a
6 long time. Most of my comments will echo comments that were
7 made previously by Browning Ferrous Industries today, and
8 will focus on the agricultural composting operation
9 amendments that resulted from the last draft, that being
10 amendments that were adopted from the July 8th, 1994 draft of
11 regulations. Prior to a hearing that took place in Compton,
12 I believe it was --

13 MS. TRGOVCTCH: Claremont.

14 MS. DELMATIER: Claremont. Claremont, that's
15 right. I know it started with a C somewhere in Southern
16 California. I actually appeared, but I'm not a Southern
17 Californian, so somehow all those cities get lumped together.

18 But in any event, the July 8 version of the draft
19 regulations for composting regulatory requirements, it was
20 our estimation at that point in time that that document was a
21 largely consensus document and reflected in large part the
22 expert testimony and expertise of the Compost Advisory Panel
23 consisting of scientific experts and experts actually
24 operating in the field for years and years in the compost
25 industry. And we were very enthused and complimented staff

1 at that time and want to continue to compliment staff for
2 producing a document that, which we thought was well on its
3 way toward providing the necessary regulatory framework
4 that's required under existing statute.

5 And as the previous speakers have mentioned, I mean
6 obviously we'd all like to operate out there as we best see
7 fit by our individual companies and or organizations, however
8 the statutes do exist and the statutes require that a permit
9 be issued for all compost facilities. So I recognize that
10 staff has a difficult job in trying to address a regulatory
11 framework that is consistent and abides by existing law as
12 mandated by the state legislature and yet matches the
13 regulatory framework with the public health and safety and
14 environmental risk.

15 The, in the notice of proposed rulemaking the
16 statement that is basically an overriding principle that is
17 listed in promulgating the regulations states that,

18 "The proposed regulatory action is
19 being taken primarily to ensure that
20 composting facilities are designed and
21 operated in a manner which protects
22 public health and safety and the
23 environment."

24 That's what we're trying to get to, and we're
25 trying to get there in a manner which does not, which is not

1 overly burdensome to the industry. But at the same time
2 under the requirements of the Administrative Procedures Act
3 there are some tests by which any proposed rulemaking package
4 must meet.

5 And a couple of those just to start are, of course,
6 a necessity requirement and standard and, of course, the
7 standard for competition between in-state and out-of-state
8 businesses.

9 To begin with, in addressing the specific
10 requirements that are being recommended subsequent to the
11 July 8 draft for purposes of agricultural composting
12 operations, we'd like to first comment on the more than
13 doubling of the threshold for exclusion from 1,000 cubic
14 yards to 2,500 cubic yards. In the July 8 version, of
15 course, we did have the, this standard for under a thousand
16 cubic yards, folks were, or operations were excluded from the
17 requirements of the regulatory package.

18 At the 2,500 cubic yard threshold then we get into
19 a different tier. That is now being raised under the
20 proposed package today that the 2,500 cubic yard now is the
21 standard for exclusion, anything underneath is excluded and
22 2,500 and above is the notification tier. We would like to
23 see that. Since this was a largely consensus document that
24 the Compost Advisory Panel signed off on, we'd like to see
25 that that recommendation that was, that was a part of the

1 July 8 version, a thousand cubic yard, be maintained. And
2 that the consensus amongst the Compost Advisory Panel,
3 including all the experts and scientific recommendations and
4 evidence that produced that 1,000 cubic yard recommendation
5 as part of the necessity standard in promulgating this
6 particular recommendation, that the scientific evidence that
7 was produced by that panel reflects that the evidence
8 warrants that particular number.

9 If 2,500 cubic yards is the appropriate number
10 under the necessity standard, then it's incumbent upon those
11 interests who are proposing to raise the threshold to provide
12 like scientific expert testimony and evidence to provide for
13 a different recommendation that warrants a change in the
14 number. And so it's incumbent upon the, in order to meet the
15 OAL standard for necessity it's incumbent upon staff to
16 either revert back to the 1,000 cubic yard or produce
17 documentation that, that provides the evidence warranting
18 that change in number.

19 Next I'd like to comment on the Section 17852(D)(1)
20 which would allow up to 50 percent of the agricultural
21 composting operation to include nonagricultural green
22 material, or more specifically, municipal solid waste. And
23 municipal solid waste obviously is not typically or
24 traditionally agricultural waste. So we've got basically a
25 contradiction in terms. We define agricultural composting

1 operation and we're saying that that feedstock may also
2 include up to 50 percent nonagricultural waste or municipal
3 solid waste, or I'm going to use the acronym MSW.

4 Obviously this creates no standards. And either
5 there are legitimate public health and safety environmental
6 concerns for all operators who use MSW as a feedstock, or
7 there are not. And either the regulations need to provide a
8 consistent regulatory framework for all operators who utilize
9 MSW or we are providing an unfair competition for those
10 operators who are, who are given a preferential treatment by
11 allowing agricultural compost operators utilizing MSW in
12 their operations to qualify under the notification tier or
13 nonpermit, and other operators who utilize municipal solid
14 waste or MSW must meet either registration or standardized or
15 full permit.

16 Now again, for OAL purposes we've got dual
17 standards and we're, we are in this particular draft
18 providing for inconsistent regulation, as mentioned earlier
19 by BFI representative, Mr. Mark Leary, we've got some
20 Constitutional problems as far as equal protection under the
21 laws as well.

22 So we would adamantly recommend that if you're
23 going to promulgate regulations that require MSW operators
24 that are not agricultural operators to meet more stringent
25 standards for operation and permit requirements than anyone

1 who provides or incorporates MSW feedstock ought to meet
2 those same standards.

3 Now the cotton gin folks who testified provided a
4 perfect example where we acknowledged that agricultural
5 operations are deserving, if you will, of special treatment.
6 And that special treatment takes into consideration, and
7 we've advocated both before this body as well as before the
8 state legislature that agricultural operations who utilize
9 their own ag waste on agricultural lands, that is a whole
10 different scenario than allowing agricultural operators to
11 utilize municipal solid waste.

12 And so where we agree with the agricultural
13 industry and the cotton gin folks who testified earlier that
14 that is an appropriate use of their waste stream and
15 certainly ought to be at a maximum at the notification tier
16 if not excluded altogether. But once you cross the line in
17 accepting municipal solid waste, that's where we part ways
18 and would recommend strongly and adequately that consistent
19 regulations and consistent standards be applied equally and
20 equitably across the board for all operators.

21 In addition to those comments, there also is a
22 strong concern amongst industry and amongst others in my
23 discussions with environmental community and local agencies
24 that there is no upper threshold for the 50 percent special
25 treatment and preferential treatment for the agricultural

1 section in 17852. In other words, the, as proposed the
2 agricultural composting operation, there is no limit, there
3 is no threshold by which there is a maximum amount of tonnage
4 of municipal solid waste that can be utilized or this
5 notification or nonpermit tier.

6 So if, for example, if an agricultural composting
7 operation wants to utilize a million tons or more of compost
8 on their facility, 50 percent of that can be municipal solid
9 waste. That presents extreme concerns for purposes of
10 environmental and public health and safety protections and
11 associated risks. So I know that we want to, it's my
12 understanding we want to produce some sort of work group
13 potentially that might come up with a specific number or a
14 threshold or maximum cap, and we would encourage Board and
15 staff to put that work group together in order to come
16 together and find some sort of compromise that might suggest
17 a meaningful number. But to leave it open-ended with no,
18 absolutely no limit placed on the amount of municipal solid
19 waste certainly is not consistent with the overriding
20 principle that I mentioned earlier.

21 Next, the issue of selling and giving away.
22 Obviously, if agriculture composting operations are going to
23 be given a preferential treatment and they are not, they are
24 not abiding by the same standards as other MSW operators, we
25 would encourage, again, the staff to revert back to the July

1 8 version which does not allow for selling and giving away in
2 open marketplace, and again would be inconsistent with the
3 standards set forth under the Administrative Procedures Act,
4 and again would provide a preferential treatment between
5 competing segments of the industry.

6 As far as those potential risks, in Section
7 17852(D)(3) what is recommended is that the facility which
8 utilizes MSW quote, "Employs methods to minimize
9 contamination." Now for those solid waste operators who have
10 historically utilized municipal solid waste, those operators
11 are quite familiar with the stringent standards set forth by
12 this agency, by the Air Board, by the Water Board, and by
13 Toxics requiring a myriad of different levels of regulation
14 to protect the public health and safety and environment. And
15 it is not surprising to those folks who operate in this field
16 to know that there are certain contaminants that appear in
17 the municipal solid waste stream that are not conducive to
18 the composting operation. Those contaminants include
19 hazardous waste, both household and industrial, medical waste
20 including infectious medical waste, and other nonhazardous,
21 nonorganic waste such as plastic, glass, metals and ceramics.

22 None of these things are conducive to providing a
23 compost end product that is both safe and good for the
24 environment. However these things appear in the municipal
25 solid waste stream, and to assume, to merely assume that the

1 feedstock is a hundred percent clean, a hundred percent pure
2 simply ignores common sense. And for those, for this agency
3 in particular to ignore the standards that have been set
4 forth for the handling of municipal solid waste for other
5 operators and simply to assume that, "Well it's all going to
6 be taken care of somehow," and that these things aren't going
7 to appear in the portion of the municipal solid waste stream
8 that ends up in the agricultural composting operation just
9 doesn't make common sense.

10 So at a minimum we would encourage that anyone who
11 handles municipal solid waste must meet the load checking
12 requirements that are not only acknowledged by this agency
13 but by
14 Toxics, Water Board and Air Board.

15 For an agricultural composting operation who is
16 not, or operator who is not trained in handling these
17 prohibitive ways it's, and wouldn't even know it if they saw
18 it, simply chip it and grind it, just doesn't meet the
19 overriding principle.

20 Finally, what's being proposed in the rest of the
21 tiers. For other MSW operators, all of these tiers are based
22 on actual tonnage amounts and so we have thresholds by which
23 other MSW operators, large versus small, etcetera, must abide
24 by as far as what their actual tonnage is. And obviously
25 when we've gone to the agricultural composting operation we

1 haven't set any of those.

2 We have, we simply said you can use up to 50
3 percent no limit, etcetera, etcetera, I mean it can be a
4 million tons, it could be two million tons, it could be three
5 million tons, the number's endless. So obviously we would
6 recommend that again we go back to the numbers that were
7 largely consensus that were developed by the Compost Advisory
8 Panel, and that failure to produce scientific evidence and
9 scientific documentation as outlined under the Administrative
10 Procedures Act in meeting the necessity test just doesn't
11 pass muster, if you will, for purposes of promulgating these
12 regulations through OAL. And I'd be happy to answer any
13 questions.

14 HEARING OFFICER HUMPERT: Looks like we don't have
15 any questions. Thank you, Ms. Delmatier.

16 Looks like we have four speakers left so we're
17 moving right along. Our next speaker is Gary Conover,
18 Western United Dairymen.

19 MR. CONOVER: Good afternoon. My name is Gary
20 Conover, I'm Vice President for Western United Dairymen. I'm
21 in charge of legislative and regulatory affairs of the
22 district. I have not been assigned this regulatory review
23 until the last week or so, it's been held by one of our other
24 staff members, Earl Holtz, who I think you may know. I've
25 been busy on other regulatory affairs such as air quality

1 problems with VOCs and PM10 and water surface problems, water
2 quality. The dairy industry is a heavily regulated industry
3 in California.

4 Western United Dairymen is a trade association with
5 a membership of approximately 1,400 dairymen, producers from
6 Bakersfield north to Humboldt. We're concerned about the
7 regulations and the impact that it will have on our members
8 and that they'll be unduly regulated. We believe the
9 original intent of the solid waste regulations was to reduce
10 the flow of green material to landfills and that manure which
11 our concern is, is designated as a subset of manure. We
12 believe that the desire to reduce manure going to landfills
13 is not going to be seen because we don't deliver manure to
14 landfills.

15 So the accomplishment of the 25, 50 percent will,
16 at least as far as our concern in manure, will not be
17 accomplished by the regulations that you're drafting. I
18 understand that regulations maybe speak to a different topic,
19 but I think somewhere in your analysis you have to understand
20 that, and maybe the public has to understand that the
21 regulation of manure is not to fulfill the obligations of AB
22 939.

23 The proper handling of manure is a heavily
24 regulated part of our industry by the Water Quality Control
25 Board and the Department of Fish and Game already. We

1 recognize that under Section 17855(A)(3) that ag operations
2 are excluded if they compost manure and return that material
3 to their own land or land under their control, as an example
4 a lease.

5 Not excluded are those materials, excuse me, not
6 excluded are those who give the manure away or sell manure by
7 the pickup load to the general public. This is a change in
8 policy from your previous drafts which we think is
9 unwarranted.

10 Section 17852(A) in describing active compost is
11 really the section which traps dairy operations. Manure
12 becomes compost when it reaches 122 degrees Fahrenheit
13 according to your definitions. Most of our manure when
14 stacked will, depending on the moisture, reach 122 degrees
15 Fahrenheit whether or not that dairy operator plan on making
16 compost by this definition or not.

17 I think the composting of manure is probably the
18 most rapid of all the materials that you described in your
19 definitions. The dairy operators who sell manure do not make
20 any claims as to its fertilizer value, its only claim is that
21 it's a manure, it's a soil amendment not an additive.
22 Therefore, we're not concerned, and I don't think you're
23 concerned about the competition between commercial operations
24 that guarantee some value of MP and K.

25 Specifically, we would recommend under Section

1 17852(5), subsection (5)(N), we would like to see manure to
2 be a category of its own, not a subset of the green material
3 section.

4 In addition, Section 17855(3), we think this
5 section needs to be modified to allow dairy operators to sell
6 or give away manure. Many dairy operations will give manure
7 away as they don't have adequate land on which to place it.
8 And in order to meet regulations by the water quality boards
9 they need to move manure off of their operation. Much like
10 the Ginners Association, we have very few members that
11 actually sell the manure for a profit. Most operators have
12 to pay to have the manure removed from their property. The
13 individual receiving the manure generally will pick up half
14 the tab of the transportation of the manure. So in our case
15 manure is not a profit oriented by-product of the dairy
16 operation, it's more of a nuisance.

17 In your analysis of the impact to the general
18 public which I haven't seen except almost a disclaimer to it,
19 I need to ensure that you understand the dairy industry in
20 California and how milk is regulated. The dairy produces,
21 prices that are paid to them by the processors is regulated
22 by the State of California through the Secretary of
23 Agriculture. Now that price is established through a few
24 mechanisms, but generally it's the cost of the production
25 plus a decent return on their investment for that product.

1 Therefore if in fact in this regulation you
2 maintain manure as a product that will be not only regulated
3 but a permitted product through a fee that, that fee will be
4 passed on through a petition to the Secretary of Agriculture
5 to raise the producer prices as paid by the processors. That
6 fee will certainly show up in the price of a gallon of milk
7 on the shelf.

8 I don't know any other commodity groups that are
9 here that can clearly define that impact to the consumer, but
10 it's there. And while our industry is extremely complex in
11 its pricing system, its support system, and its regulations,
12 we invite you to contact the Department of Food and Ag's Milk
13 Pooling Branch, and they'll certainly describe to you the
14 negative impact that regulations and assessments have on the
15 price of milk and milk by-products.

16 I guess in closing, you know, we think manure is
17 simply a soil amendment, it's not a product that we're
18 looking to, and probably don't see a future in earning a
19 profit off of. It's, it is a by-product of the dairy
20 operation and we've used it as a soil amendment and therefore
21 we ask an exemption of it. Any questions?

22 HEARING OFFICER HUMPERT: I think we do.

23 MS. TRGOVCICH: Just to point out for you, Mr.
24 Conover, and I don't know if you heard my comment earlier to
25 Mr. Sherman representing CORC, but we are concerned, the

1 issue's been raised to us regarding the inclusion of manure
2 in the definition of green material and we're certainly going
3 to be looking at that, so we'll take your comments under
4 consideration.

5 MR. CONOVER: I did hear that and I think there's
6 other sections in which you have to, I don't know the intent
7 of including manure as its own subsection from where you're
8 coming from, we support that, but I think to couple that with
9 striking the restriction of selling it or giving it away
10 would reach our goal.

11 MS. TRGOVCICH: Okay.

12 MR. LUNA: I have a question for you, Mr. Conover.
13 When you said, when you were mentioning or you would see
14 manure as being part of the green waste definition, as one of
15 the groupings within the green waste category of the
16 regulations, were you thinking of including manure within the
17 same types of permits, the same, say the different tiers
18 we're proposing, the different operational requirements as
19 well, not just as part of the definition?

20 MR. CONOVER: Well I think the reason we want
21 manure separated as a subset of green material because it
22 gets caught up in the referencing of green material in its
23 application throughout the regulations. If manure had its
24 own definition section I think, and if we went further and
25 amended different regulations it would be easier to follow as

1 you move through the regulations. Right now, and I'm going
2 to plead a little ignorance, it gets a little confusing as
3 when you're talking about manure or green material as to,
4 especially when you're talking about green material if you're
5 also talking about manure. So I think for clarification
6 purposes to follow manure from the beginning to the end it's
7 easier if it had its own section.

8 MR. LUNA: Okay. You would like to see it then as
9 a separate feedstock throughout the regulation?

10 MR. CONOVER: Yes.

11 HEARING OFFICER HUMPERT: Great. Thank you Mr.
12 Conover.

13 Our next witness is Steve Witbeck, Las Virgenes
14 Municipal Water District.

15 MR. WITBECK: My name is Steve Witbeck, and I'm the
16 Water Reclamation Superintendent for the Las Virgenes
17 Municipal Water District. I'm responsible for the operation
18 of the district's wastewater facilities which includes a new
19 biosolids facility that incorporates an enclosed composting
20 system as part of the process.

21 In addition to our conditional use permits, the
22 facilities that we operate are currently regulated by six
23 separate permits issued by the Regional Water Quality Control
24 Board, as well as three permits issued by the Air Quality
25 Management District. To require an additional permit for

1 composting will not improve the oversight of our facilities,
2 nor will it improve the operational or product standards that
3 we're required to meet. It will result in my agency's
4 participation in a burdensome process that will consist
5 primarily of duplicating information already provided to
6 other regulatory agencies and it will result in an unneeded
7 expenditure of public funds.

8 The appropriate tier for POTW composting facilities
9 is notification of enforcement agency, and I hope that you
10 will see fit to modify the regulations accordingly. Thank
11 you.

12 HEARING OFFICER HUMPERT: Thank you. That was very
13 short.

14 MR. WITBECK: It's getting late in the day.

15 HEARING OFFICER HUMPERT: Okay. Our next witness
16 is Chris Anaya, self. Is Chris here? We'll try again later.

17 MR. ANAYA: You're right, in a way I informally
18 represent our community, although I can't say I do because
19 they aren't aware of this meeting, I just found out about it
20 at 10:00 o'clock this morning that's why I'm here, and please
21 bear with me, I'm a terrible public speaker, but I'm
22 prepared, so I'm even worse when I'm unprepared. So please
23 bear with me.

24 I'm here regarding biosolids or sewage sludge,
25 whichever you want to call it, I don't care. I'm for it.

1 I'm for it with respect to doing it correctly and with other
2 people in mind besides sheer dollar signs. I think it's very
3 important to recycle nowadays. Sludge is a useful commodity,
4 as far as, as well as other, other types of fertilizers. In
5 fact, just a couple years ago I tried to get some sludge for
6 my house where I was going to put a lawn in and I was denied
7 because of the problems that the new regulations created.
8 But as time went on I realized that it is important to have
9 strict regulations on this stuff.

10 One reason, depending on what area I believe that
11 sludge should be restricted, and I'm saying strictly sludge,
12 I'm not referring to manure or any other green products
13 because I think they fall under a different category, for one
14 because sheer waste, as everybody knows, there's more than
15 just human feces that comes down the drain.

16 Last year thousands of tons were poured down
17 people's drain with toxic materials, and these water
18 districts can't possibly filter out all this stuff all at
19 once, it's impossible. And there's more and more happening
20 every day.

21 The problem I have, and the reason why I'm here now
22 is there's a, there is a potential sludge site I'll call it,
23 biosolid waste facility being planned by our house. While
24 that's fine, I'm all for it, in fact, I'd be the first one in
25 line trying to make some money out of it, recycle it for the

1 community. However, the people that live in this area all
2 depend on well water and there's not a single person around
3 that has any city water that's pumped to their house. What
4 happens if that soil becomes contaminated, you know? Who are
5 they going to fall back on?

6 Right now there's a waterway that's been
7 contaminated, everybody's turned their backs; Fish and Game
8 says they have no power, they have no power within the law;
9 the Water Quality Regional Board, whatever you call it, is
10 kind of working hand in hand with them, and the worst part is
11 it's happened and nobody's been notified. We found out by
12 dead fish floating around, it went on for weeks, found out
13 Fish and Game was notified a week later. Why is it taking so
14 long?

15 We've got a human element here involved. And when
16 you get the human element involved, no matter how good your
17 statistics look, no matter how good everything is laid out,
18 somebody's going to screw up and somebody's going to try to
19 cover it up, and people downstream aren't going to find out
20 about it. What happens? People are going to be drinking it
21 and nobody's going to hush, nobody says anything, it didn't
22 happen. Well I don't agree with that. I have two homes, one
23 home is with city water and I create sewage from that
24 location. Two, I have another place that requires well
25 water. We have a septic tank. We're very careful and we

1 treat our water very preciously at that site.

2 And right now when a water district proposes taking
3 a sludge facility out of their jurisdiction, out of their
4 service area and placing it into somebody else's backyard who
5 has no other source of water, I think that's irresponsible.

6 One of the things I think this board should do is
7 take into consideration that when you place a sludge site by
8 a water source that these people have some kind of backup in
9 case their water system goes down. These people, their
10 land's going to be worthless if there's no other water
11 alternative. Because this water district has already said
12 they have no intention of ever shipping water to those homes
13 because it costs. We're a little bit higher in elevation.
14 You got to pump a half a pound per square foot to get up one
15 foot in elevation, that's money. Every time I turn around
16 it's dollars, dollars, dollars. I've heard today burden,
17 cost, overregulating -- hey, it's easy to say that when
18 you've got city water coming to your house and you don't have
19 to worry about it because you can almost guarantee that it's
20 going to be filtered out pretty well.

21 You know, I went to a local, I kind of laughed
22 about it, I went to a local water agency recently, throughout
23 the whole building bottled water everywhere -- hey, don't
24 they trust their own water? I mean, come on folks. This --
25 you know, anyway.

1. I think one of the regulations should be not to
2 have one of these biosolid processing plants near a body of
3 water, whether it be a creek, river, or lake. It should be
4 out of the way where there's no chance for contamination.
5 Also there should be strict regulations on it. And I tell
6 you it really upsets me because I've got friends whose wells
7 are contaminated right now and nobody's done anything about
8 it.

9 There's one lady who depends on it from a creek,
10 which is foolish, you know. I called the Water Quality
11 Control Board, she goes, "Well they shouldn't be doing that,
12 they should know all surface water is contaminated." Now why
13 is that? If that's a fact maybe our regulations are a little
14 too lax. This lady she depends on a filter. Now everybody
15 here knows, they're all in the water industry I assume, knows
16 that not one filter does everything. And this lady, I don't
17 know what's going to happen to her, probably nothing, she's
18 probably old enough where nothing will affect her, but what
19 happens to the next people that move into the house and the
20 children start drinking it at a early age? I mean, hush,
21 don't tell anybody, no questions. The community I'm talking
22 about is right in one certain area and we are trying to take
23 care of our own and God knows what's happening to the people
24 downstream with that. We have no idea. We just know that
25 nobody's been notified.

1 I think it's irresponsible not to protect our
2 water. And with this recycled sludge being the way it is
3 today it's pretty new, you know. Years ago we all had septic
4 tanks, you know, it had to be a hundred feet away from the
5 stream, real cautious, but now we have toilets and we have
6 sewage and this is all relatively new in the past hundred
7 years, it really is, and we got, we can't just jump into it,
8 you have to make restrictions, and then as time allows go
9 ahead and allow maybe being closer to a stream. And that's
10 pretty much all I got to say right now.

11 HEARING OFFICER HUMPERT: Before you go could I ask
12 you maybe a couple of questions? First of all, I'm assuming
13 that your neighbors, you've talked to your neighbors about
14 this and how do they feel?

15 MR. ANAYA: Oh, they're very upset.

16 HEARING OFFICER HUMPERT: Secondly, could you
17 possibly identify your community?

18 MR. ANAYA: I can't. No. Because I think, I'm not
19 here for political reasons as far as pointing a finger at a
20 certain water agency. I don't think that's right. That's
21 not what this format is for.

22 HEARING OFFICER HUMPERT: That's fine.

23 MR. ANAYA: Although I'd love to, but I decided
24 before I came here it's just not right.

25 HEARING OFFICER HUMPERT: And I guess lastly, are

1 you planning any other action?

2 MR. ANAYA: I tell you it's hard. I had a list of
3 so many names the other day, probably 50 names and at least
4 that many phone names and it was hard, really hard. I've
5 been at the library for two weeks now and I found out this by
6 accident this morning at 10:00 o'clock. How is it, I'd like
7 to know how everybody found out about this meeting today?
8 It's amazing, is it just certain flyers go out to certain
9 people? I don't know.

10 But you know what, if the public knew about this
11 they'd be here pounding on the door. Well I guess I'm the
12 one. But all in all I just think -- oh, one last thing
13 besides waterway. I think if this board has any say-so
14 whatsoever, which I don't think, I don't know, I haven't read
15 your agenda here, I haven't had time, or what your new
16 regulations are going to be, but if you have any way of
17 requiring that a wastewater treatment plant keeps their
18 sludge within their jurisdiction in case something goes
19 wrong, at least the people in that community have city water
20 to rely on.

21 When you allow these people to take it out of their
22 jurisdiction, place it somewhere else because they don't want
23 to offend the local people, it opens up a whole can of worms
24 from the people that are depending on well water, you know,
25 it really does. If they create it, keep it in your own

1 backyard. There's plenty of places that are off-site and
2 away, but cost always seems to be the big thing, that's the
3 biggest word I've heard is cost, cost, cost. Well it's
4 costing us too; maybe not in dollars, but in other ways.
5 Keep it in their own jurisdiction in case the water is
6 contaminated. They at least have their own plumbed city
7 water to fall back onto, and there's not really a big problem
8 as far as closing down their whole neighborhoods.

9 Us, we depend on well water. It's very precious to
10 us. We don't let water go down the street when we water. I
11 know one guy he goes down to the local pond to pick up water
12 to go water his plants. These are people. I mean take that
13 into consideration. Sure we're the small minority but, you
14 know, I found fighting big industry, and you asked me that
15 question, there's people that are in, pretty much do what the
16 builders and developers want, and that's my opinion. Thank
17 you.

18 HEARING OFFICER HUMPERT: Mr. Anaya, if you would
19 like to get on our mailing list we do have a sign-up sheet
20 back there and we'll send you future notices.

21 Okay, our last witness is Tharon Garber,
22 Wheelabrator Waste Management.

23 MR. GARBER: Well I don't know what to say. Thank
24 you for coming, by the way. We all suffer from one bad
25 apple. I searched really deep down wondering if we're the

1 bad apple. Thank you for allowing me to speak today. I
2 don't even know what I was going to say now after that.

3 Basically I wanted to stay away from scope and
4 concept issues. You've heard a lot of that today. Maybe
5 talk about some more technical points regarding the regs.
6 Basically I had three issues that I wanted to talk about.

7 The first regarding technical issues. The first
8 was the lab certification statement in the regs. I really
9 feel that if you're going to require a certified lab you
10 probably should give a definition of what a certified lab is.

11 I might also suggest that maybe rather than
12 requiring a certified lab that you require certified methods,
13 EPA along with, in their 503 regulations, along with the
14 regulations also provided methods for testing.

15 The other one was the collection of windrow
16 temperatures. We've talked about this a little bit before.
17 The 12 inch requirement that you put for windrow composting,
18 we're opposed to that. I think if you look at the PRF, PFRP
19 regulations and realized how they came to be you'd see that
20 there are really two factors that are important when you take
21 these temperatures. The first, obviously, is heat activation
22 to reduce pathogens. And the second is the redistribution of
23 the material. They work together. And so what you've really
24 done, I think, is shot yourself in the foot. Yes, you are
25 requiring monitoring in the coldest part of the windrow, but

1 that's not the important part of the windrow. The concept of
2 the process is to redistribute the material via turning into
3 the hot sections of the windrow, that's where we need to be
4 measuring to make sure that they're hot. We know that
5 they're cold to 12 inches, that's not important.

6 I provided an appendix with our written comments
7 that goes into it a little bit further and provides a
8 temperature contour map, also a table of inactivation times
9 and temperatures that will show you clearly that a lot of the
10 pathogens we're talking about are inactivated at about 60
11 minutes at 55 degrees. So trying to require 15 days to the
12 outside of a windrow might be a little bit ridiculous.

13 The other one was the one percent grade. We really
14 feel that if it's a hard surface that may not be necessary
15 and that there should be some provision if that's even under
16 your hat of regulation. Possibly that's a water quality
17 issue and we certainly wouldn't want any overlap.

18 Then some of the other issues that I wanted to
19 maybe ask a question on or provide a comment was your plan
20 for compliance with CEQA with these regulations. I have not
21 seen or had the ability to review an environmental document.
22 I would very much like to do that. And I didn't know what
23 your plan was for that issue.

24 And then the other question I had regarding CEQA
25 was it's perfectly, it seems to make sense to me that

1 obviously a full solid waste facilities permit, probably
2 standardized permit and maybe even registration, constitute
3 an action which would require an environmental document.
4 Exclusion might possibly be an action, but notification, I
5 don't know if those are actions and if those will require
6 environmental documentation through the permitting process.

7 So those are some questions that I have, I think
8 that really need some clarification as we go forward,
9 especially for the tiered process because you may, in fact,
10 be trying to circumvent CEQA with your notification and
11 exclusion process, and I don't know if that might be the best
12 thing. As we've just heard, these facilities do have
13 impacts.

14 The other thing that I wanted to talk about a
15 little bit was in regard to the lead enforcement agency and
16 their ability to regulate under a higher tier. The PRC is
17 very clear in several sections that the enforcement agency
18 has some power to issue these permits, and that's really not
19 discussed in the regulation as to whether they would have the
20 ability to require a higher tier during the permitting
21 process. That's something I think that needs to be looked
22 at. It's explained a little bit more fully in the written
23 comments I provided to Scott at the break.

24 That's really all that I have. Let's get out of
25 here.

1 HEARING OFFICER HUMPERT: Okay. Thank you, Mr.
2 Garber. Are there any other comments? People wishing to
3 make comments?

4 If not, I'd like to thank you all for your
5 participation and declare this hearing officially closed.
6 Thank you.

7 (Thereupon the foregoing hearing was
8 concluded at 4:47 p.m.)

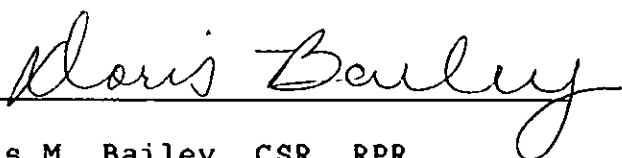
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1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER
2

3 I, DORIS M. BAILEY, a Certified Shorthand Reporter
4 and Registered Professional Reporter, in and for the State of
5 California, do hereby certify that I am a disinterested
6 person herein; that I reported the foregoing hearing in
7 shorthand writing; and thereafter caused my shorthand writing
8 to be transcribed by computer.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said proceedings, nor in
11 any way interested in the outcome of said proceedings.

12 IN WITNESS WHEREOF, I have hereunto set my hand as
13 a Certified Shorthand Reporter and Registered Professional
14 Reporter on the 10th day of October, 1994.

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